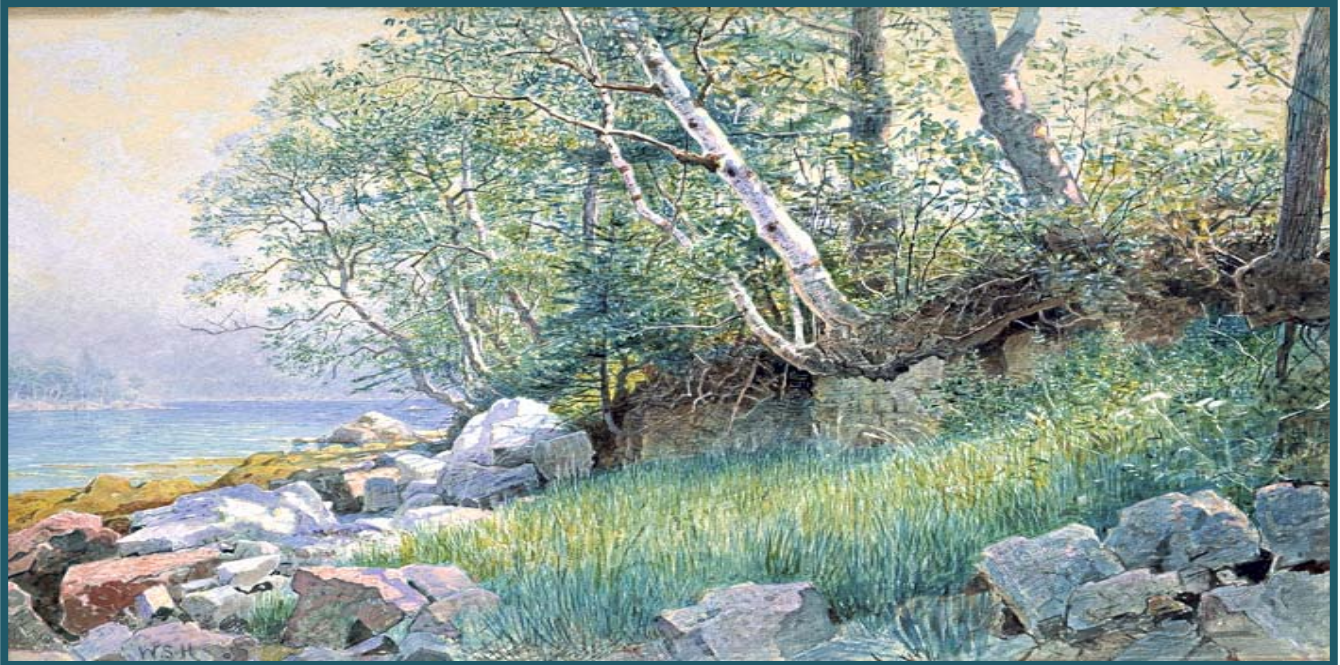
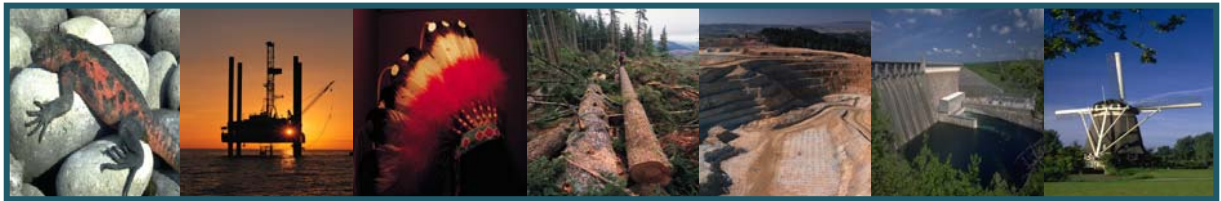


U.S. Department of Justice



Environment and Natural Resources Division



ENRD



ENRD

FY 2012

PERFORMANCE BUDGET

CONGRESSIONAL SUBMISSION



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[Cover art from National Gallery of Art, permanent collection, William Stanley Haseltine (1835–1900), “Northeast Harbor, Maine,” 1895, watercolor and Chinese white on paper]

[Information in text boxes is courtesy of The National Center for Public Policy Research; website (<http://www.nationalcenter.org/EarthDayArchive.html>)]


I. Overview of the Environment and 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 that protect human health and the environment, including natural resources, and to defend suits challenging those laws and agency programs. To accomplish this mission **in FY 2012, the Division is requesting a total of \$117,244,000, including 589 positions, and 584 Full-Time Equivalents (FTE).**

For FY 2012, ENRD proposes to adjust our authorized position level to more accurately reflect our current use of GLA (Direct) funded positions and Superfund (Reimbursable) positions. This adjustment is non-budget-impacting and has no monetary impact.

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.justice.gov/02organizations/bpp.htm>.)

Environmental Stewardship: ENRD Supporting Efforts to Protect the Earth and Natural Resources	
	Air Quality: "Between 1970 and 2005, total emissions of the six principal air pollutants in the United States (nitrogen dioxide, ozone, sulfur dioxide, particulate matter, carbon monoxide and lead) tracked by the Environmental Protection Agency declined by 53 percent. During this time, the U.S. gross domestic product increased 195 percent, vehicle miles traveled increased 178 percent, energy consumption increased 48 percent and the U.S. population increased 42 percent.

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 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.

ENRD defends 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 98 pending Tribal Trust cases filed by 114 Tribes in various U.S. District Courts (44 cases), in the Court of Federal Claims (50 cases), in the Federal Circuit (2 cases), and in the Supreme Court (1 case). For these Tribal Trust cases, 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 several trials expected in FY 2012.


A relatively new area to which ENRD expects to devote resources in FY 2012 is Global Climate Change. Litigation related to climate change over the past few years 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.

ENRD expects to continue to commit significant resources to efforts related to the April 2010 explosion and sinking of the Deepwater Horizon and subsequent oil spill in the Gulf of Mexico (the largest oil spill in the Nation's history.) The Division is working closely with the Department's leadership, the Civil Division, and a host of federal agencies to coordinate a criminal investigation and pursue multiple civil enforcement actions, under the Clean Water Act and the Oil Pollution Act, against potentially responsible parties involved in the incident. ENRD's civil lawsuit, filed in December 2010 against nine parties, will become part of a multi-district litigation action involving hundreds of plaintiffs. The discovery requirements involved in

the Deepwater litigation are unprecedented and the outcome of the Department's civil Deepwater litigation is likely to be historic in terms of the scale and scope of monetary penalties and redress imposed.

ENRD and the Civil Division have jointly established an investigative/litigation support center in New Orleans to address the needs of the Department as well as to support the efforts of our federal agency partners. We have also established a robust jointly-administered web portal which allows federal parties to effectively and efficiently share documents, databases, dockets and other relevant materials and information. ENRD and the Civil Division are leveraging our respective expertise on the relevant statutes which each component is most familiar with, working closely with the federal agencies which each Division has established relationships with, and sharing pertinent knowledge and information in regular meetings and conference calls. 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.

Environmental Stewardship: ENRD Supporting Efforts to Protect the Earth and Natural Resources



Climate: "Total U.S. greenhouse gas emissions dropped by 1.5 percent in 2006. The total reduction in U.S. carbon dioxide emissions was 1.8 percent. By comparison, carbon dioxide emissions by participants in the European Union's Emissions Trading Scheme (Europe's version of cap and trade, an emissions-regulation system now under consideration by the U.S. Congress) increased by 0.3 percent in 2006."

C. 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 2012 as a result of numerous factors.

- In FY 2011 and 2012, the Division anticipates that several **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 our docket will continue to reflect more **Climate Change litigation** in FY 2011 and FY 2012. Climate Change litigation has already required substantial division resources in recent years. The litigation thus far has been primarily defensive in nature, with the Division responding to allegations that client agencies have failed to consider greenhouse gas emissions or climate change impacts when making agency decisions under the Clean Air Act, the Endangered Species Act, and the National Environmental Policy Act.

- 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 exercised 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. Valuation litigation, which will proceed into FY 2012, is the most resource-intensive stage of these actions, and we are currently in the midst of that process. This demanding project will continue for the foreseeable future.
- ENRD supports the defense and security missions of the Department of Defense and the Department of Homeland Security. From defending environmental challenges to critical training programs that ensure military preparedness, to acquiring strategic lands needed to fulfill the government's military and homeland security missions, ENRD makes a unique and important contribution to defense and national security while ensuring compliance with the country's environmental laws. The Division expects its **military readiness docket** – to include litigation to defend training missions and strategic initiatives, expand military infrastructure, and defend chemical weapons demilitarization – to continue and expand in FY 2012.

ENRD expects to receive a number of civil and criminal environmental enforcement referrals from EPA concerning clean air, clean water and clean land. As EPA has placed a substantial emphasis on environmental justice, we expect some of these cases to involve situations in which a disproportionate adverse environmental or human health effect on an identifiable low-income/minority community or federally-recognized tribe consistent with Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations”). In addition, the Division is reviewing its own cases to make sure that environmental justice is appropriately taken into account and advanced in its work. Accordingly, the Division will need to devote additional resources to ensure protection of the nation's air, water and other resources for all Americans under the Environmental Justice order and other applicable federal laws and regulations.

Prosecution of white collar environmental crimes and related corporate fraud continues to be an important objective for the Department. ENRD realized a number of legal victories in the area of white collar environmental crimes in FY 2010 (described in the Accomplishments section of this Performance Budget), and we foresee more investigative and litigative activity in FY 2012 and beyond.

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.

Internal Challenges

ENRD faces numerous challenges in balancing available personnel and resources against workload demands.

Like other litigating components, we must provide 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 ENRD faces in FY 2012 is the development and implementation of a replacement system for ENRD's current Case Management System (CMS), which currently is based on an unsupported platform. ENRD staff are in the early stages of performing a build vs. buy analysis for a new software platform to replace CMS. Implementation of the CMS replacement is expected to be a resource-intensive initiative in FY 2012. Based on this new direction, ENRD will be required to contribute significant personnel resources in FY 2012 and in subsequent years to implement and administer this system. This endeavor will require the effort and attention of government employees and specialized expertise and supplemental labor from 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 2012. For example, the Division expects to begin planning, development and testing of the Department's Unified Financial Management System (UFMS) in FY 2012. Throughout FY 2012 we will devote government employee resources and contract personnel to UFMS, and other required IT systems development and implementation projects.

In addition to the technology challenges facing ENRD in FY 2012, we expect to continue to encounter residual macroeconomic challenges which impact staffing in the Division. ENRD's historical attorney attrition over the past several years has ranged from 8-14%; in FY 2009 and FY 2010, it was 6%. In any given year – under positive economic conditions and normal levels of turnover – some percentage of our attorney workforce leaves ENRD for positions at law firms. This did not happen in FYs 2009 and 2010. Attorneys are instead choosing to remain at ENRD due to a general slowdown in the legal profession, once again, related to the slowdown in the overall economy.

To access the Exhibit 300 submission regarding information technology for ENRD and other DOJ components, please go to: ([http://www.usdoj.gov/jmd/2012justification/exhibit300/.](http://www.usdoj.gov/jmd/2012justification/exhibit300/))

Environmental Stewardship: ENRD Supporting Efforts to Protect the Earth and Natural Resources



Energy Efficiency: Energy consumption per dollar of GDP has declined at an average annual rate of 1.7 percent during the last 25 years according to the U.S. Energy Information Administration. Similarly, per-capital energy use grew 61 percent in the 25 years from 1949 to 1974, but grew only two percent in the 25 years since then according to the Pacific Research Institute's Index of Leading Environmental Indicators 2001.

D. Environmental Accountability

The Department's Environment and Natural Resources Division has undertaken a "Greening the Government" initiative in response to Executive Order 13423 (January 24, 2007), which requires all federal agencies to meet benchmarks for reductions in energy usage, water consumption, paper usage, solid waste generation, and other areas. Among other things, through the Executive Order, government agencies have been asked to reduce energy consumption by 30% by 2015. Congress mandated compliance with this Executive Order in recent appropriations legislation (Omnibus Appropriations Act, Pub. L. 111-8, § 748 [2009]).



Earth Day at ENRD

Since 2004, ENRD has held an annual Earth Day service celebration at Marvin Gaye Park in Northeast Washington, D.C. In the past six years, thanks to t-shirt and mug sales, the Division has been able to help the park purchase over \$7,500 worth of trees and landscaping materials as part of the park revitalization event. ENRD also has devoted more than 2,500 hours of employee time to planting trees, removing trash, laying sod, and gardening. In both 2007 and 2008, ENRD received community service awards from the Department of Justice for its Earth Day event.

ENRD celebrated Earth Day again on April 22, 2010 at Marvin Gaye Park. Nearly 200 volunteers, including then-Acting Deputy Attorney General Gary Grindler and representatives from several DOJ components, participated in the event. Working side by side with the Washington Parks and People Foundation, ENRD volunteers planted trees, spread mulch, removed invasive plants, and pulled trash and debris from the Watts Branch of the Anacostia River.

Energy Use at ENRD

Through ENRD's Greening the Government committee, and through other management and staff efforts, ENRD continued to encourage *Best Practices* which help the Division to minimize energy use. Our Best Practices entail such things as turning off lights (not only in offices, but also common areas, rest rooms, and hallways) when they are not needed; turning off computer monitors (or setting them to an energy saving mode) when not in the office; turning off other electronic devices when not in use; removing or disabling unnecessary light fixtures; encouraging use of stairs as opposed to elevators; and encouraging other energy efficient protocols.

The Environment Division's Information Technology (IT) staff is keenly aware of its environmental responsibilities, buying energy efficient hardware before Energy Star became a Federal Government mandate. To maximize energy efficiency, with our most recent server procurement we employed virtual server technology (which allows us to buy 37% fewer servers), and we installed exclusively Dell® Energy Smart servers, an energy-saving technology that

exceeds EPA's Energy Star requirements. Together, the use of virtual server technology with Energy Smart servers will reduce the Division's power requirements and heat output by 50%.

ENRD continues to encourage employees to walk, bike and use public transportation when commuting to and from work. In addition to offering the traditional transit subsidy benefit (for employees who utilize public transportation and car pools), as of FY 2010, ENRD's pilot commuter benefits program for bicycle commuters has been adopted by Justice Management Division for implementation throughout the whole Department. The program is made possible by the Bicycle Commuter Benefit Act, which was recently added to IRS Code Section 132(f).

IV. Decision Unit Justification

A. Environment and Natural Resources Division

<i>FY 2012 Request Summary</i>	Perm. Pos.	FTE	Amount (\$000)
2010 Enacted with Rescissions	459	509	109,785
2010 Supplemental	10	10	5,000
2010 Enacted with Rescissions and Supplemental	469	517	114,785
2011 CR	459	507	109,785
Adjustments to Base and Technical Adjustments	130	77	7,625
2012 Current Services	589	584	117,410
2012 Program Increases	0	0	0
2012 Program Offsets	0	0	-166
2012 Request	589	584	117,244
Total Change 2010-2012 (incl. pos/FTE correction)	120	67	2,459

<i>Information Technology Breakout</i>	Perm. Pos.	FTE	Amount (\$000)
2010 Enacted with Rescissions	24	24	6,442
2010 Supplemental	0	0	0
2010 Enacted with Rescissions and Supplemental	24	24	6,442
2011 CR	26	26	8,470
Adjustments to Base and Technical Adjustments	0	0	-784
2012 Current Services	32	32	7,686
2012 Request	32	32	7,686
Total Change 2010-2012	8	8	1,244

Environmental Stewardship: ENRD Supporting Efforts to Protect the Earth and Natural Resources



Wetlands: The U.S. is gaining wetlands. Between 1998 and 2004, the U.S. experienced a net gain of 191,750 acres of wetlands, which is equal to an average net gain of 32,000 acres of wetlands per year. By comparison, in the 1970s, the U.S. lost an estimated 290,000 acres of wetlands per year. There are an estimated 107.7 million acres of wetlands in the conterminous United States.

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 and natural resource laws and regulations, 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.)

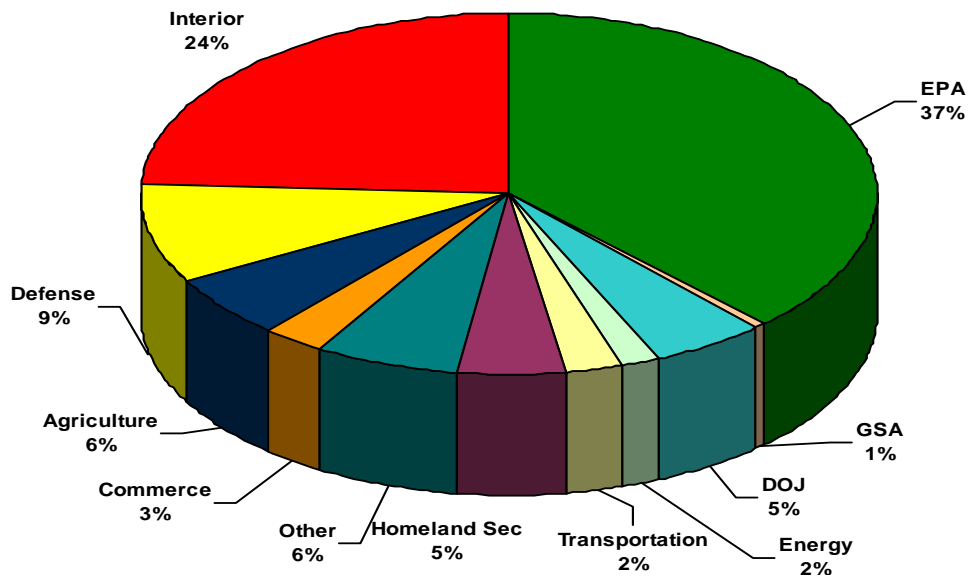
As the nation's chief environmental litigator, ENRD strives to obtain compliance with environmental and conservation statutes. To this end, we seek to obtain redress of past violations that harmed the environment, establish credible deterrence against future violations of these laws, recoup federal funds 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.

Environmental Stewardship: ENRD Supporting Efforts to Protect the Earth and Natural Resources



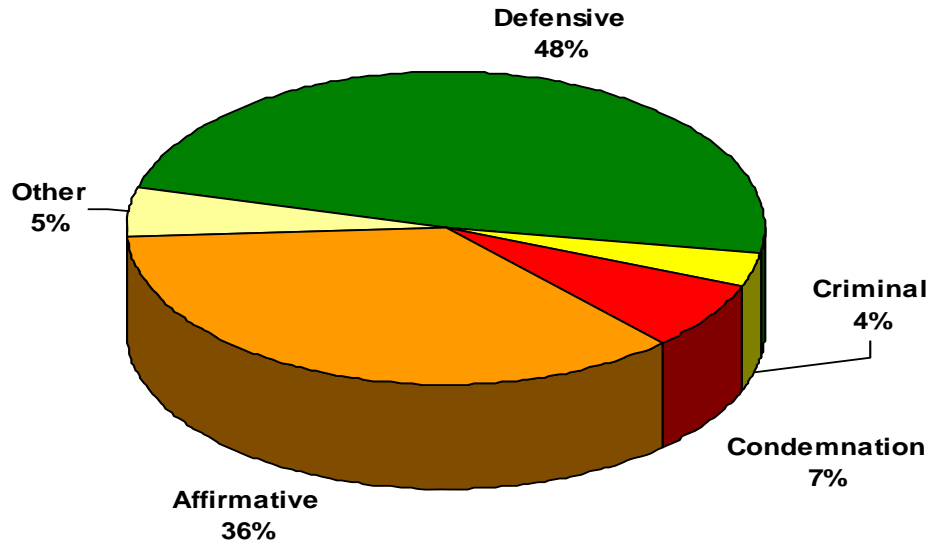
Forests: “The U.S. is gaining forestland. The United States averaged an annual gain in net forest area of 159,000 hectares per year between 2000 and 2005. The U.S. is the fourth leading nation in the world with respect to annual net gain in forest area. Globally, the annual net loss of forests has decreased from an average of 8.9 million hectares per year during the time period of 1990-2000 to 7.3 million hectares per year between 2000 and 2005.

ENRD’s Cases/Matters Pending By Client Agency (end of FY 2010)



Civil litigating activities include cases where ENRD defends the United States in a broad range of 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).

ENRD's Cases/Matters Pending By Case Type (end of FY 2010)



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 reviewed in the Performance and Resources Table contained in this submission.

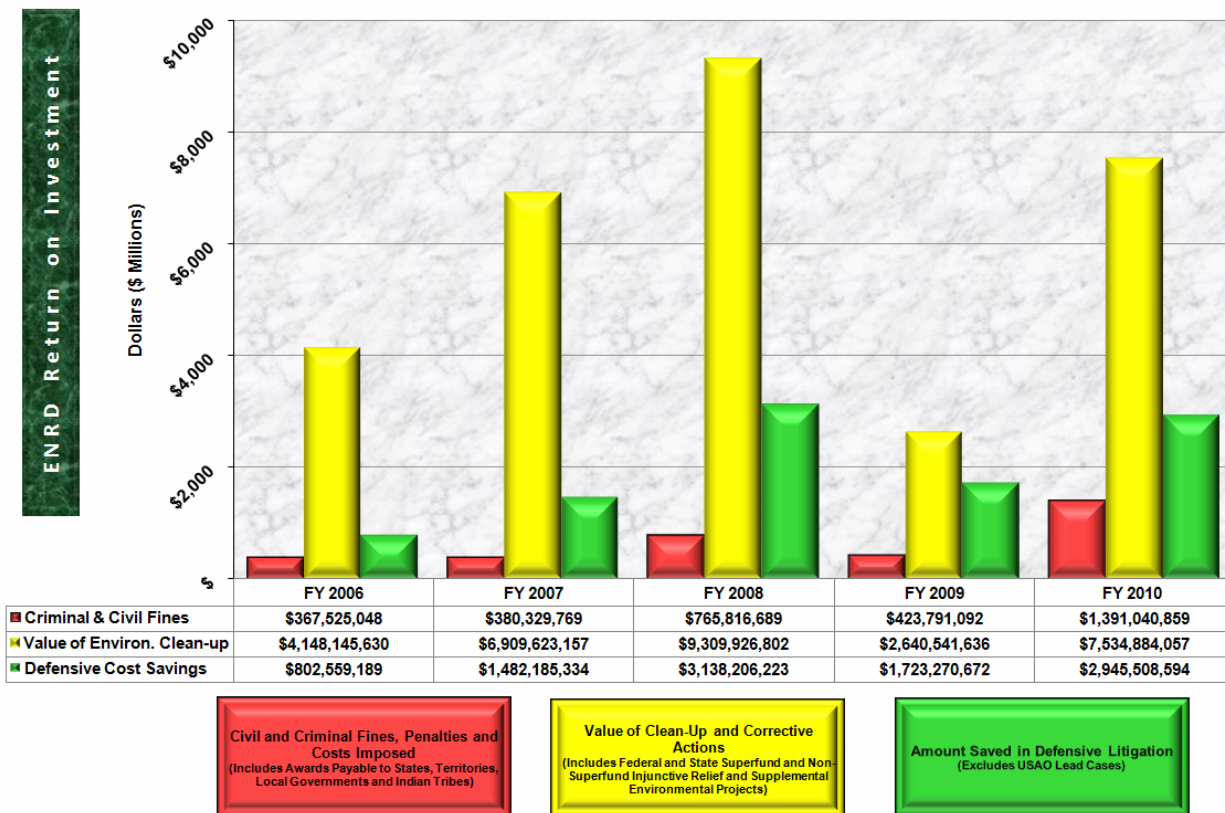
Criminal litigating activities focus on identifying and prosecuting violators of laws protecting wildlife, the environment, and public health. These cases involve issues such as fraud in the environmental testing industry, smuggling of protected species, exploitation and abuse of marine resources through 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 reviewed in the Performance and Resources Table contained in this submission.

ACCOMPLISHMENTS

In FY 2010, ENRD successfully concluded 850 cases from a total of 6,589 pending cases, matters and appeals. We recorded more than \$1.3 billion in civil and criminal fines, penalties, and costs recovered. The estimated value of federal injunctive relief (i.e., clean-up work and

pollution prevention actions by private parties) as a result of cases litigated by ENRD in FY 2010 totaled \$7.5 billion. Through our defensive litigation efforts in FY 2010, we avoided costs (claims) of more than \$2.9 billion. The Environment Division received 2,213 **new** cases and matters and filed 1,197 cases in FY 2010. ENRD achieved a favorable outcome in 91 percent of cases resolved.

Below are notable successes from the Division’s civil and criminal litigation dockets.



Civil Cases

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

In FY 2010, the Division secured the largest recovery ever of funds for hazardous waste cleanup and environmental restoration through the bankruptcy reorganization of American Smelting and Refining Company LLC, known as ASARCO. The Company and its predecessors operated in the mining, milling, and smelting industries for more than 100 years, leaving a legacy of environmental contamination at more than 80 sites in 19 states. ASARCO’s 2005 bankruptcy is the largest environmental bankruptcy in history, in terms of both number of sites and the amount of the company’s liability. The ASARCO reorganization plan includes total payments of \$1.67 billion to the United States, various trusts, and 14 different states. Much of the money paid to

the U.S. will be placed in special accounts in the Superfund for EPA to pay for future cleanup work. It also will be placed into accounts at the Departments of Agriculture and the Interior to pay for natural resource restoration.

- ***Controlling Contaminated Storm Water Run-Off by Construction Companies***

The Division reached a settlement with Hovnanian Enterprises Inc., a national residential homebuilder, in which the company will pay a \$1 million civil penalty to resolve alleged Clean Water Act violations at 591 construction sites in 18 states and the District of Columbia. Hovnanian will also implement a company-wide storm water compliance program at existing and future sites around the country. The Clean Water Act requires that construction sites have controls in place to prevent pollutants carried by storm water from polluting nearby waterways. The company is alleged to have failed to obtain storm water permits or failed to prevent or minimize the discharge of pollutants such as silt and debris in storm water runoff. A portion of the settlement helps EPA efforts to protect the Chesapeake Bay, North America's largest and most biologically diverse estuary. The bay and its tidal tributaries are threatened by pollution from a variety of sources, and overburdened with nitrogen, phosphorus and sediment that can be carried by storm water. A total of 161 Hovnanian construction sites in the District of Columbia, Maryland, Virginia and West Virginia fall within the bay watershed and are covered by this settlement.

Environmental Stewardship: ENRD Supporting Efforts to Protect the Earth and Natural Resources



Soil Erosion: "Soil erosion rates are falling. Estimated soil erosion rates in the U.S. decreased by 43 percent between 1982 and 2003. In 2003, 72 percent of all cropland was eroding at or below what the U.S. Department of Agriculture's Natural Resources Conservation Service considers a tolerable level, compared to only 60 percent of cropland meeting this standard in 1982."

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

ENRD continues to successfully litigate Clean Air Act ("CAA") claims against operators of coal-fired electric power generating plants. These violations arise 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 adversely affects the health of the elderly, the young, and asthma sufferers, degrades forests, damages waterways, and contaminates reservoirs.

ENRD settled a case with Duke Energy, one of the largest electric power companies in the nation. Duke will spend approximately \$85 million to significantly reduce harmful air pollution at an Indiana power plant and pay a \$1.75 million civil penalty. The settlement also requires Duke to spend \$6.25 million on environmental mitigation projects. Duke must either repower two units at its Gallagher plant with natural gas or shut them down to remove all sulfur dioxide pollution. This natural gas repowering will also reduce other air pollutants, including nitrogen oxides, particulate matter, mercury, and carbon dioxide. Duke is required to install new

pollution controls for sulfur dioxide at two other units at the plant. The work and projects that are required by the settlement will, when fully implemented, result in substantial improvements to the air quality for the communities that are the most heavily impacted by the Gallagher plant's emissions.

Duke Energy represents the 17th settlement secured by the federal government as part of a national enforcement initiative to control harmful emissions from coal-fired power plants under the Clean Air Act's new source review requirements. The total combined sulfur dioxide and nitrogen oxide emission reductions secured from these settlements will exceed 2 million tons each year once all the required pollution controls have been installed and implemented.

Environmental Stewardship: ENRD Supporting Efforts to Protect the Earth and Natural Resources



Air Quality: "80 percent of ozone monitoring locations were in violation of the EPA's '8 hour' ozone standard in the late 1970s; by 2007, this number had dropped to 15 percent. The less stringent '1-hour' standard was met by 94 percent of U.S. monitoring locations by 2006, this is in comparison to a 20 percent achievement rate in the late 1970s.

- ***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 reached an agreement with the City of Akron, Ohio, in which the city will expand and improve its sewer system to reduce or eliminate sewage overflows that have long polluted the Cuyahoga River, the Little Cuyahoga River, the Ohio Canal and their tributaries. The Cuyahoga River, an American Heritage River, flows through Cuyahoga Valley National Park and the Cleveland metropolitan area to Lake Erie. As part of the settlement, the city is required to pay a \$500,000 civil penalty and to provide \$900,000 to a state supplemental environmental project for the removal of a dam on the Cuyahoga River.

Additionally, on May 18, 2010, ENRD filed a complaint and lodged a Consent Decree resolving CWA violations committed by the City of Kansas City, MO (KCMO) in the course of its operation of its combined and separate sanitary sewer systems. The complaint alleges that KCMO has violated its NPDES permits and the Act by discharging raw, or partially treated sewage into various receiving streams and rivers, as well as into basements, parks and other public areas. The Decree requires that KCMO implement injunctive relief measures estimated to cost \$2.4 billion over a 25-year period. The Decree also requires payment of a civil penalty of \$600,000 to the U.S. and the performance of a SEP (septic tank disconnection). The State of Missouri, which is being named as a non-aligned party for purposes of the lawsuit, is separately settling with KCMO for some recent discharges of sewage from the separate system. Pursuant to that settlement, KCMO will pay a penalty of \$120,000 and reimburse response costs in the amount of \$15,000.

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

The Division continued to make progress in its national initiative to combat CAA violations within the petroleum refining industry. Shell Chemical L.P. and Shell Chemical Yabucoa agreed to install pollution reduction equipment at an estimated cost of \$6 million as part of two comprehensive Clean Air Act settlements. The two companies will also pay a combined \$3.3 million civil penalty to the United States, Alabama, and Louisiana and \$200,000 to Louisiana organizations for environmental education and emergency operations. Shell Chemical L.P. will apply new air pollution control technologies to reduce emissions at its petroleum refining facilities in Saraland, Ala. and St. Rose, La. The two refineries in Alabama and Louisiana, and a terminal operation in Puerto Rico, will upgrade their leak-detection and repair practices to reduce harmful emissions from pumps and valves, implement programs to minimize the number and severity of flaring events, and adopt new strategies for ensuring continued compliance with benzene waste requirements under the Clean Air Act. The settlements will reduce air emissions of sulfur dioxide (SO₂), nitrogen oxides (NO_x) and other harmful pollutants by more than 1,450 tons per year, and will result in reductions of volatile organic compounds and benzene.

These are the 25th and 26th in a series of “global” multi-issue, multi-facility settlements being pursued by EPA under its National Petroleum Refinery Initiative. One hundred and two refineries operating in 30 states and territories are now covered by global settlements, representing more than 89 percent of the nation’s refining capacity.

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

The Division reached a Clean Air Act settlement with BASF Corporation to reduce the use of refrigerant chemicals that destroy the earth’s stratospheric ozone layer. The company will spend more than \$250,000 to retrofit one refrigeration unit that currently uses such chemicals, replacing them with environmentally-friendly alternatives, and will either retrofit or retire two other units. BASF will also pay a civil penalty of \$384,200 to resolve alleged Clean Air Act violations. All of those units currently use hydro-chlorofluorocarbons, known as "HCFCs," which destroy stratospheric, or "good" ozone. BASF has already replaced or retired four other refrigeration units at BASF’s facilities in Livonia, Mich.; Greenville, Ohio; and South Brunswick, N.J., at a cost of over \$200,000. Combined, the measures that the company is performing will remove approximately 4,760 pounds of harmful HCFCs from their operations. BASF will also pay a civil penalty of \$384,200 to resolve alleged Clean Air Act violations.

- ***Protecting the Public Against Hazardous Waste***

The Division reached a settlement with Norfolk Southern Railway Company to resolve alleged violations for a 2005 train derailment in Graniteville, S.C. Norfolk Southern is required to pay a civil penalty of \$3,967,500 for the discharge of tons of chlorine from a derailed train tank car and thousands of gallons of diesel fuel from ruptured locomotive engine fuel tanks. The penalty will be deposited in the federal Oil Spill Liability Trust Fund. For the alleged Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) violation for failure to immediately notify the National Response Center of the chlorine release, Norfolk Southern will also pay a penalty of \$32,500, to be deposited in the Hazardous Substance Superfund. Nine

people died as a result of chlorine exposure and hundreds of people sought medical care due to respiratory distress. More than 5,000 people living and working within a 1-mile radius of the release area were evacuated. A cloud of the gas settled over nearby Horse Creek and its tributaries and was absorbed into the water in sufficient quantity to kill hundreds of fish. Two of the engines involved in the crash leaked diesel fuel, a portion of which reached Horse Creek. Under the terms of the agreement, Norfolk Southern will provide incident command system training to environmental and transportation personnel; stock a nearby pond to replace fish killed by the spill; and post the telephone number for the National Response Center to facilitate spill reporting. The settlement includes a \$100,000 supplemental environmental project along Horse Creek.

- ***Enhancing Pipeline Safety***

ENRD reached an agreement with Pacific Pipeline Systems LLP, a Long Beach, Calif.-based oil transport company. The company will pay a \$1.3 million civil penalty and discontinue the use of a section of pipeline through an unstable section of mountains to resolve a Clean Water Act violation involving the discharge of crude oil into Pyramid Lake, located about 60 miles northwest of downtown Los Angeles. In March 2005, a landslide caused a portion of Pacific Pipeline Systems' Line 63, an underground pipeline that runs from Bakersfield, Calif., to Los Angeles to fail. The resulting pipeline break discharged approximately 3,393 barrels of oil, much of which flowed into Pyramid Lake, which is part of the California Aqueduct and is a potential drinking water supply. As part of the agreement, Pacific Pipeline Systems will discontinue use of approximately 70 miles of the Line 63 pipeline that travels through the Tehachapi Mountains, portions of which are geologically unstable. The agreement allows for the reuse of the pipeline after the company performs specific actions to relocate the pipeline into more geologically stable areas or improve its resistance to earth movement.

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

In FY 2010, the Division reached a settlement worth more than \$30 million to ensure cleanup of the Sutton Brook Disposal Area Superfund Site, in Tewksbury, Mass. While the agreement resolves federal and state liability claims against 49 potentially responsible parties for the cleanup of the site, 20 of the parties will be responsible for implementation of the remedy selected by EPA in 2007. These parties will also pay for the state's past response costs, oversight costs incurred by EPA and MassDEP, as well as \$1.65 million to the U.S. Fish and Wildlife Service and the state for natural resource damages claims stemming from injuries to groundwater and wetlands. The remaining settling parties are required to make payments to two trusts to be used to partially fund the cleanup at the site, also known as Rocco's Landfill, and to pay for response costs. The selected remedy includes excavation and consolidation of contaminated soils and sediments, construction of a multi-layered impermeable cap, capture and treatment of contaminated groundwater, institutional controls and long term monitoring. The total cost for the selected remedy is estimated to be \$29.9 million.

- ***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 98 cases brought by more than 100 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 proceedings) and informally engaging with the tribes 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 cases, had others dismissed on procedural grounds, and is prepared to proceed with discovery and trial in yet others.

Criminal Cases

- ***Prosecuting Environmental Crimes***

The Environment and Natural Resources Division, through the Environmental Crimes Section (ECS), routinely handles both pollution and wildlife crimes throughout the United States. ECS cases are often built around the core pollution and wildlife statutes, but the Section uses all available criminal laws. ECS has prosecuted individuals and organizations for criminal violations in nearly every federal judicial district in the nation, and has significant experience responding to large-scale environmental incidents and managing complex environmental cases.

As is reflective of the Division's ongoing efforts related to the Gulf oil spill, ENRD is on the "front lines" in responding to pressing environmental incidents. ECS played a leading role in the criminal investigations following the Exxon Valdez incident that resulted in the largest environmental settlement in United States history when Exxon and Exxon Shipping entered guilty pleas pertaining to the Exxon Valdez oil spill in Prince William Sound, Alaska, which resulted in a 700 mile migration of crude oil and the death of 36,000 migratory birds. As a result of the criminal investigation, Exxon pled guilty to one count of the Migratory Bird Treaty Act, and Exxon Shipping pled guilty to violations of CWA, the Refuse Act and MBTA resulting in a total criminal penalty of \$250 million in criminal fines and restitution.

ECS also prosecuted the BP Texas City case, along with the U.S. Attorney's Office for the Southern District of Texas that resulted from a catastrophic explosion that occurred at the BP Texas City refinery on March 23, 2005, killing 15 contract employees and injuring more than 170 others. As a result of the investigation, BP pleaded guilty to violating the Clean Air Act and agreed to a criminal fine of \$50 million.

More recently, ECS was involved in the prosecution of Fleet Management Ltd., a Hong Kong-based ship management firm, whose ship, the *Cosco Busan*, struck the San Francisco Bay Bridge in dense fog on November 7, 2007. As a result of the investigation, Fleet Management Ltd. pleaded guilty to a criminal violation of the Oil Pollution Act of 1990 for its role in negligently causing the discharge of more than 50,000 gallons of fuel oil into San Francisco Bay. The

company also pleaded guilty to felony obstruction of justice and false statement charges for creating false and forged documents after the crash at the direction of shore-based supervisors with intent to deceive the U.S. Coast Guard. Fleet agreed to pay a \$10 million criminal penalty; \$2.0 million will be devoted to fund marine environmental projects in San Francisco Bay. The pilot of the *Cosco Busan* was sentenced to 10 months in prison, one year of supervised release, and 200 hours of community service for his role in causing the collision and discharge of oil and deaths of migratory birds.

- ***Vessel Pollution Cases***

Over the past decade, working in conjunction with the U.S. Coast Guard (USCG), ENRD, through ECS, has built a successful vessel pollution prosecution practice, focusing on the prosecution of individuals and corporations involved in pollution from ships and the deliberate falsification of official ship records designed to conceal illegal pollution. The Vessel Pollution Program 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 has seen great success prosecuting deliberate violations in vessel pollution cases. Over the past 10 years, the criminal penalties imposed in such 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.

For example, in *United States v. Polembros Shipping, Ltd.*, the defendant, a Greek shipping operator, pleaded guilty and was sentenced for numerous violations, including making false statements and failure to maintain accurate oil and ballast water records for the cargo ship *M/V Theotokos*. The company was sentenced to pay a \$2.7 million fine and \$100,000 to fund research of marine invasive species, and to complete a three-year term of probation. The ship's master was sentenced to serve 10 months' incarceration, and two other crew members were ordered to serve probation.

ECS also led the criminal investigation of *Overseas Shipholding Group Inc.* (“OSG”), which resulted in a plea agreement requiring *OSG* to pay a total criminal penalty of \$37 million, the largest ever criminal penalty involving deliberate vessel pollution. In addition to the fine, *OSG* was sentenced to serve a three-year term of probation during which required it implement and follow a stringent environmental compliance program that included a court-appointed monitor and outside independent auditing of *OSG* ships trading worldwide.

- ***Enforcing the Clean Water Act***

A Mobile, Ala., grand jury indicted a waste disposal company, its president and top manager for illegal disposal of waste into the sewage treatment systems of Mobile and of neighboring municipalities. The charges include numerous violations of the Clean Water Act and fraud and conspiracy for having dumped into local sewers thousands of gallons of waste grease and oil that they had been hired to dispose of safely and legally. Mobile has had a history of sewage overflows, inadequate wastewater treatment and polluting effluent caused by blockages of sewer

lines and treatment works with solidified grease. In response to lawsuits under the Clean Water Act, the city entered into a court ordered agreement with EPA under which Mobile implemented a grease control program to prevent cooking oils from entering the sewer system. A company employee pleaded guilty to dumping numerous loads of grease into area sewer systems, to having falsified records to make it appear that the waste had been disposed of properly, and to having conspired with the defendants. Individuals who are found to have violated the Clean Water Act are subject to up to three years of incarceration per count, twenty years in prison for fraud, as well as monetary penalties.

- ***Enforcing the Laws Against Overfishing***

The Division continued to prosecute violations of the Lacey Act, a federal law that prohibits individuals or corporations from creating false records for fish or wildlife, and from transporting, selling, or buying fish and wildlife harvested illegally. The charges are a result of an investigation and analysis beginning in 2003 by an interstate task force formed by the U.S. Fish and Wildlife Service, the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit. In FY 2010, a Washington, D.C., fish wholesaler, two of its employees, and a fisherman were found guilty of illegally harvesting and purchasing rockfish from 1995 through 2007.

In early spring each year, wild coastal striped bass enter the estuary or river where they were born to spawn, and then return to ocean waters to live, migrating along the coastline. Fish spawned from the Chesapeake Bay ecosystem contribute the greatest number of striped bass to the Atlantic coastal fishery. Maryland regulates the commercial catch from its waters and enforces the regulations of the Potomac River Fisheries Commission, which regulates the commercial catch from the main stem of the Potomac River. The striped bass management and protection measures are focused on maintaining a target spawning stock to protect the fishery from over-fishing.

The cases revealed that in excess of one million pounds of striped bass worth more than \$5 million were illegally harvested and sold through a number of schemes that involved the failure to affix required tags to the fish, fishing during closed season, falsely affixing required tags, taking fish in violations of size restrictions, falsifying required harvest records, and creating false receipts and records to conceal the harvests and sales from state regulators. The exploitation revealed during the investigation also contributed to Maryland revising portions of its striped bass regulations last year.

The task force has resulted in 22 felony convictions: fourteen fishermen from Maryland and Virginia, five individuals who operated seafood wholesale companies, and three seafood wholesale companies in Maryland, Virginia, and the District of Columbia. Combined, the individuals have been sentenced to more than 140 months in prison, and total fines and restitution have exceeded \$1,361,000.

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

In *U.S. v. Gunther Wenzek*, the defendant was sentenced to serve three years' probation and a criminal penalty of over \$35,000 for smuggling more than 40 tons of coral into the United States in violation of international law. Due to the threat of extinction, such corals as those seized in this case are protected by international law. The penalty includes a criminal fine, restitution to the National Oceanic and Atmospheric Administration, and a community service payment. The corals seized have been identified as those common to Philippine reefs. These corals are the fundamental building blocks of the coral reef ecosystem, and their unsustainable collection frequently results in the loss of important nursery areas, feeding grounds, refuge for fish and invertebrates, and increased erosion of reef systems protecting coastal communities from storms.

Environmental Stewardship: ENRD Supporting Efforts to Protect the Earth and Natural Resources



Endangered Species: In the 32 years the Endangered Species Act has been on the books, just 34 of the nearly 1,300 U.S. species given special protection have made their way off the endangered or threatened lists. Of this number, nine species are now extinct, 14 appear to have been improperly listed in the first place, and just nine... have recovered sufficiently to be de-listed.

Performance and Resources Table (Cont.)

Program Activity	PERFORMANCE/RESOURCES	FY 2010		FY 2010		FY 2011 Continuing Resolution (CR)		Current Services Adjustments and FY 2012 Program Change		FY 2012 Request	
		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
CRIMINAL	TOTAL COSTS & FTE	52	\$ 11,478	52	\$ 11,478	51	\$ 10,979			51	\$ 10,979
	OUTPUT 1/	Active	Closed	Active	Closed	Active	Closed	Active	Closed	Active	Closed
	1. Number of cases active/closed	370	28	258	122	249	118			250	118
	2. Number of matters active/closed	14	1	34	5	12	3			9	3
	OUTCOME*	# Resolved	Success Rate	# Resolved	Success Rate	# Resolved	Success Rate			# Resolved	Success Rate
	1. Number of criminal cases successfully resolved	no estimate	90%	95	86%	no estimate	90%	no estimate	no estimate	no estimate	90%
	2. Dollars Awarded	Superfund 3/	Non-Superfund	Superfund	Non-Superfund	Superfund 3/	Non-Superfund			Superfund 3/	Non-Superfund
	- Fines 9/	no estimate	no estimate	\$ -	\$ 25,112,954	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- Restitution	no estimate	no estimate	-	64,581,518	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- Community Service Funds 10/	no estimate	no estimate	-	14,663,890	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	3. Criminal Environmental Compliance Plan 11/	no estimate	no estimate	\$ -	\$ -	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate

Additional Explanation for Targets, Program Changes, and Program Requests

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

Data Definition, Validation, Verification, and Limitations:

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

Active cases/matters are those currently being worked on as of the reporting date for the current fiscal year. Closed cases/matters are fiscal year-to-date for the reporting date.

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

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

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

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

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

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

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

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

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

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

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

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

Data Limitations: Timeliness of notification by the courts.

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

Performance Measure Table

PERFORMANCE MEASURE TABLE													
Decision Unit: Environment and Natural Resources Division													
FY 2002 includes EOUSA statistics; FY 2003 through FY 2012 are ENRD only.													
Performance Report and Performance Plan Targets		FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010		FY 2011	FY 2012
		Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
EFFICIENCY Measure	Total dollar value awarded per \$1 of expenditures (Affirmative)		\$58*	\$87	\$171	\$75	\$117	\$157	\$46	\$79	\$125	\$80	\$81
EFFICIENCY Measure	Total dollars saved the government per \$1 of expenditures (Defensive)			\$16*	\$15	\$14	\$25	\$51	\$27	\$20	\$43	\$21	\$22
OUTCOME Measure	Civil affirmative cases successfully resolved	94%	97%	96%	95%	97%	97%	99%	97%	85%	96%	85%	85%
OUTCOME Measure	Civil defensive cases successfully resolved	89%	91%	95%	92%	93%	92%	95%	96%	75%	88%	75%	75%
OUTCOME Measure	Criminal cases successfully resolved	91%	96%	95%	90%	94%	94%	95%	91%	90%	86%	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

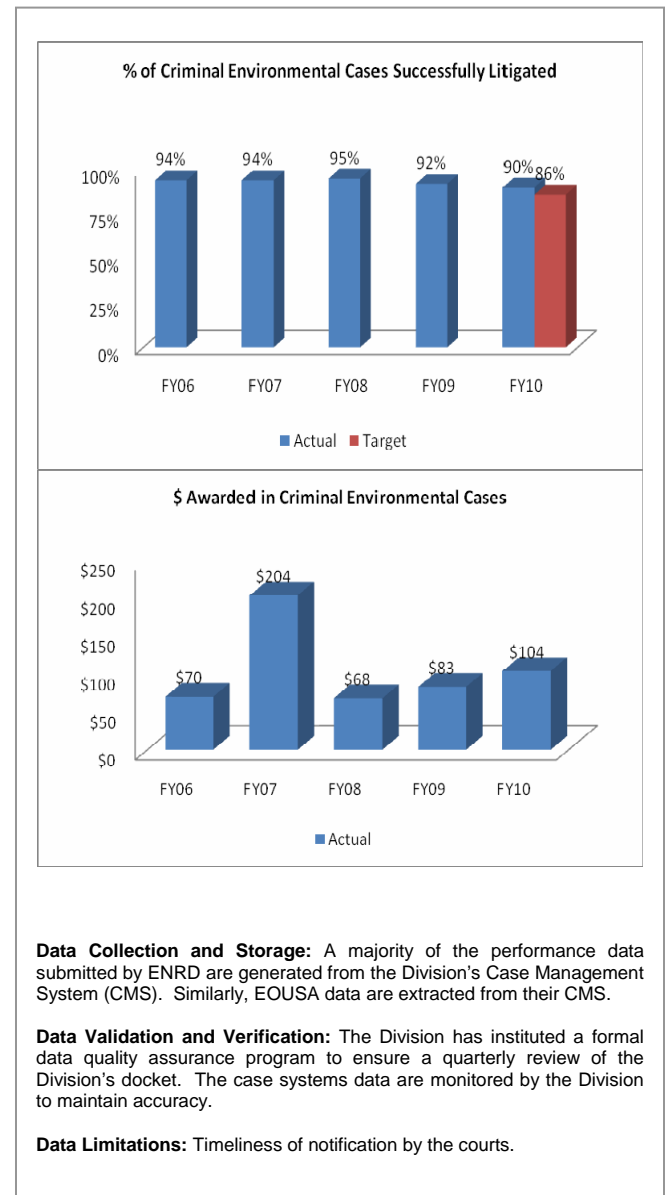
Vigorous prosecution remains the cornerstone of the Department's integrated approach to ensuring broad-based environmental compliance. It is the goal of investigators and prosecutors to discover and prosecute criminals before they have done substantial damage to the environment (including protected species), 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 2010 Target: 90%*

❖ *FY 2010 Actual: 86%*



Discussion: In FY 2010, ENRD's Environmental Crimes Section (ECS) had a strong year for criminal enforcement, successfully prosecuting 79 defendants (an 86% success rate) and imposing criminal fines and penalties totaling over \$104 million.

ENRD's criminal enforcement successes so far in FY 2010 include several prosecutions of federal wildlife laws. For example, in *U.S. v. Wayne Breitag*, the defendant was sentenced in federal court to pay a \$20,000 fine and serve six months of home confinement for smuggling a leopard hide into the United States in violation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The leopard was illegally killed in South Africa, and fraudulent permits were obtained stating the leopard had been killed in Zimbabwe. Breitag was convicted for violations of the Lacey Act, the federal wildlife statute that makes CITES enforceable.

FY 2010 Performance Plan Evaluation: Our success rate of 86% was below our goal of 90%. By any measure, we view this as an accomplishment considering the uncertain nature of predicting environmental litigation. These successes continue to be achieved even as ENRD's caseload has been decreasing over the past few years. This downward trend has been reflected in recent GPRA tables included with budget submissions. Many factors affect our overall performance such as proposed legislation and judicial calendars. The performance of the Division tends to realize spikes and valleys when large cases are decided. Therefore, our goal is to improve overall performance in a 5-year span. The Division's work has produced significant gains for the public fisc, in which ENRD impositions were more than \$104 million in criminal litigation for FY 2010.

FY 2011/2012 Performance Plan: We have set our target at 90 percent of cases successfully litigated for FY 2011 and FY 2012. ENRD targets are generally 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.

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.

Environmental Stewardship: ENRD Supporting Efforts to Protect the Earth and Natural Resources



Pollution: “The ozone layer is recovering. According to the United Nations, the ozone layer is expected to slowly recover over the next 50 years as a result of the elimination of ozone-depleting chemicals like chlorofluorocarbons.

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

❖ *FY 2010 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.*

❖ *FY 2010 Actual: \$104.3 million*

Discussion: Successes in FY 2010 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 2010 were impressive. In the Vessel Pollution cases alone, ENRD cases were responsible for over \$10 million in federal criminal penalties. ENRD won over \$104 million in criminal monetary penalties in FY 2010.

FY 2011/2012 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance for FY 2011 and FY 2012 are not projected for this indicator. Many factors affect our overall performance, such as proposed legislation, judicial calendars, etc. The performance of the Division tends to reflect peaks and valleys when large cases are decided. Therefore, we do not project targets for this metric annually, 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 law-abiding companies. 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 and improve the quality of the United States’ waterways, airways, land, and wildlife, thereby enhancing 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.

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

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

C. Priority Goals

The Division is a minor contributor the Department's Priority Goal 2: White Collar Crime. ENRD's Environmental Crimes Section (ECS) supports the Department's efforts to enforce federal laws and represent the rights and interest of the American people by increasing efforts to ferret out white collar crime and corporate corruption. The ECS has an extensive history of prosecuting white collar crime and corporate fraud in the context of environmental violations. ENRD's white collar crime includes all cases charging fraud and/or conspiracies to defraud the United States (i.e. "Klein" conspiracies under 18 U.S.C. § 371). ENRD specifically contributes to this performance goal by providing the Division's number of active white collar crime cases.

The key measure for this priority goal is to increase the combined total number of white collar crime cases by 5 percent by FY 2012, with 90 percent of cases being favorably resolved. White collar crime, as reported by this priority goal, includes a number of prosecutorial reporting categories including but not limited to: financial crime and corruption; public and corporate fraud, including health care fraud and mortgage fraud; public corruption; computer/cybercrime; identity theft; intellectual property crimes; and procurement fraud.

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

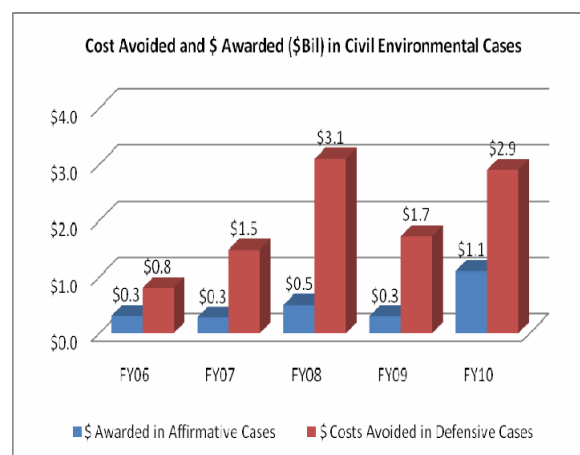
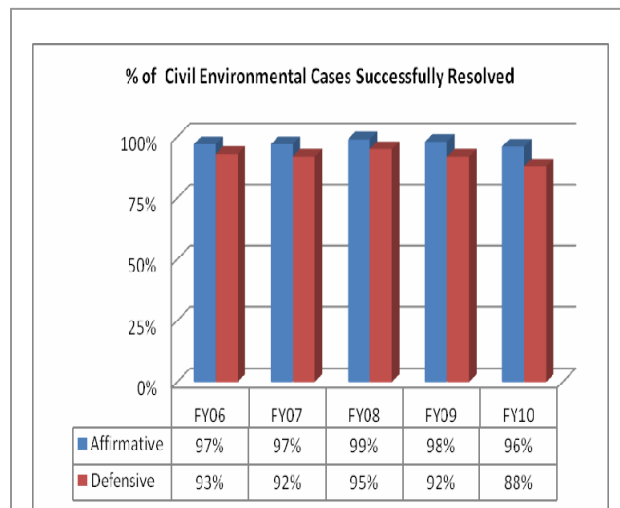
I. Performance Measure - Percent of Civil Environmental Cases Successfully Resolved

❖ **FY 2010 Target:**
85% Affirmative; 75% Defensive

❖ **FY 2010 Actual:**
96% Affirmative; 88% Defensive

Discussion: In FY 2010, the Division obtained more than \$7.5 billion in injunctive relief, through litigation or judicially approved consent decrees, which 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. ENRD also worked successfully to ensure the integrity of municipal wastewater treatment systems. Each year, hundreds of billions of gallons of untreated sewage are discharged into the nation's waters from municipal wastewater treatment systems that are overwhelmed by weather conditions they are not designed to handle.

In FY 2010, ENRD realized a number of key civil enforcement victories. We won 96% of our civil affirmative and 88% of our civil defensive cases. In a Clear Air Act case, Mosaic Fertilizer agreed to spend approximately \$30 million on air pollution controls that are expected to eliminate harmful emissions from its sulfuric acid production plant in Uncle Sam, La. The company will also pay a civil penalty of \$2.4 million to resolve alleged Clean Air Act violations. Mosaic agreed that it will permanently cease sulfuric acid production at its Mulberry sulfuric



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

acid plant in Bartow, Fla. It also will not use the emission reduction credits associated with that shut down to enable increased emissions at other facilities. These measures are expected to eliminate more than 7,600 tons of sulfur dioxide annually from the two plants. This is the sixth nationwide settlement in a Clean Air Act initiative to improve compliance among acid production manufacturers. Under all of the acid plant settlements to date, the companies are expected to spend a combined total of about \$254 million on pollution control technology, remit almost \$12 million in penalties, and eliminate approximately 44,340 tons of sulfur dioxide emissions per year.

Environmental Stewardship: ENRD Supporting Efforts to Protect the Earth and Natural Resources



Air Quality: “Annual fine particle pollution (PM2.5) concentrations decreased by 14 percent between 2000 and 2006. Daily fine particle pollution (PM2.5) concentrations decreased by 15 percent. The first year the national monitoring network for PM2.5 was fully implemented was 2000.

Discussion: We exceeded our goals-- Affirmative by 11%, and Defensive by 13%.

FY 2011/2012 Performance Plan: Considering our past performance, we aim to achieve litigation success rates of 85% Affirmative and 75% Defensive (average of 80%) for FY 2011 and FY 2012. 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. Eight years of data demonstrate that our targets are set at achievable levels and do not deter high performance.

The successes described in the “Accomplishments” section of this document demonstrate the Division’s effectiveness at defending the nation’s environmental laws. ENRD must offer a strong defense in order to maintain the Executive Branch’s ability to enforce regulatory compliance and defend policy challenges. For example, the Division’s efforts in the realm of Indian Tribal Trust litigation have been successful to date. ENRD faces a challenge in litigating these cases with limited resources; one potential impact could be delays in resolution and unnecessary expense against the federal coffers.

Environmental Stewardship: ENRD Supporting Efforts to Protect the Earth and Natural Resources



Acid Rain: “Sulfur dioxide and nitrogen oxide emissions the main pollutants in the formation of acid rain - have been markedly reduced. The Environmental Protection Agency’s Acid Rain Program has resulted in a 38 percent reduction in sulfur dioxide emissions in the electric power industry from 1980 levels. Nitrogen oxide emissions for the entire power industry in 2003 were 37 percent below 1990 levels.”

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.

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

❖ *FY 2010 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.*

❖ *FY 2010 Actual: \$2.945 billion avoided; \$915 million awarded*

Discussion: The Division had several important civil litigation successes in FY 2010 in cases seeking civil penalties and other monetary recoveries. 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.

In FY 2010, ENRD avoided over \$2.9 billion in claims against the federal government; and we won approximately \$915 million in civil environmental fines, penalties and other monetary impositions. The Division reached a settlement with Honeywell International Inc., to ensure that cleanup of the remaining areas of the Allied Chemical and Ironton Coke Superfund Site in Ironton, Ohio, will move forward. The agreement resolves federal liability claims against Honeywell for cleanup of the remaining areas of the site. The United States will recover substantially all of the costs incurred by the government in responding to the contamination at the site. This settlement and the previous agreements will result in cleanup work estimated to cost in excess of \$75 million.

FY 2011/2012 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance for FY's 2011 through 2012 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 occur in peaks 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 2010 Target: \$79 awarded; \$20 saved*

❖ ***FY 2010 Actual: \$125 awarded; \$43 saved***

Discussion: The Division had a commendable FY 2010 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 \$7.5 billion in settlements and court ordered injunctive relief. Additionally, the Division saved the government more than \$2.9 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 taxpayers hundreds of millions of dollars each year – many times the Division's annual budget. Accordingly, in FY 2010, ENRD exceeded its ambitious performance goal of total dollars saved the government per \$1 expenditures. We anticipate similar success in FY 2011 and FY 2012.

FY 2011/2012 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 2012. The out-year performance goals are 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 success through vigorous enforcement efforts which generally will produce settlements and significant gains for the public and the public fisc.

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

Environmental Stewardship: ENRD Supporting Efforts to Protect the Earth and Natural Resources



Forests: "The United States is not in danger of running out of forested land. There is more wood grown in the U.S. than is cut each year, and the number of acres planted with trees goes up nearly every year. Not since 1933 has the amount of wood harvested exceeded the amount of wood grown. Also, there are more trees in the United States today than there were in the 1920's."

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, mediations, alternative dispute resolution (ADR), and settlements. These alternative methods of resolution are less contentious and save the government expenses associated with full-blown litigation. Water rights adjudications, reclamations, and inverse takings cases are typically handled in settlement mode versus litigation mode. Settlements 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, and no longer exempts companies 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.

VI. Program Offsets by Item

A. Administrative Efficiencies:

Item Name:	Department of Justice Administrative Efficiencies
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>All Program Areas</i>
Component Ranking of Item:	<u>1</u> of <u>2</u>
Program Decrease:	Positions <u>0</u> , FTE <u>0</u> , Total Dollars <u>-\$119,000</u>

Description of Item

The Department is continually evaluating its programs and operations with the goal of achieving across-the-board economies of scale that result in increased efficiencies and cost savings. In FY 2012, the Department is focusing on areas in which savings can be achieved, which include: printing, publications, travel, conferences, supplies, and general equipment. For ENRD, these administrative efficiencies will result in an offset of \$119,000.

FUNDING

Non-Personnel Decrease Cost Summary

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Administrative Efficiencies	0	0	0	0	(\$119)	(\$119)

B. Technology Refresh Extension

Item Name:	Department of Justice Technology Refresh Extension
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>All Program Areas</i>
Component Ranking of Item:	<u>2</u> of <u>2</u>
Program Decrease:	Positions <u>0</u> , FTE <u>0</u> , Total Dollars <u>-\$47,000</u>

Description of Item

As desktops and laptops are used primarily for basic office automation applications (e.g., spreadsheets and word processing), replacing this inventory at a slower rate is expected to have minimal impact on Department operations. In FY 2012, the Department is proposing to extend the refresh rate of all desktops and laptops by one year, resulting in an offset of \$47,000 for ENRD.

FUNDING

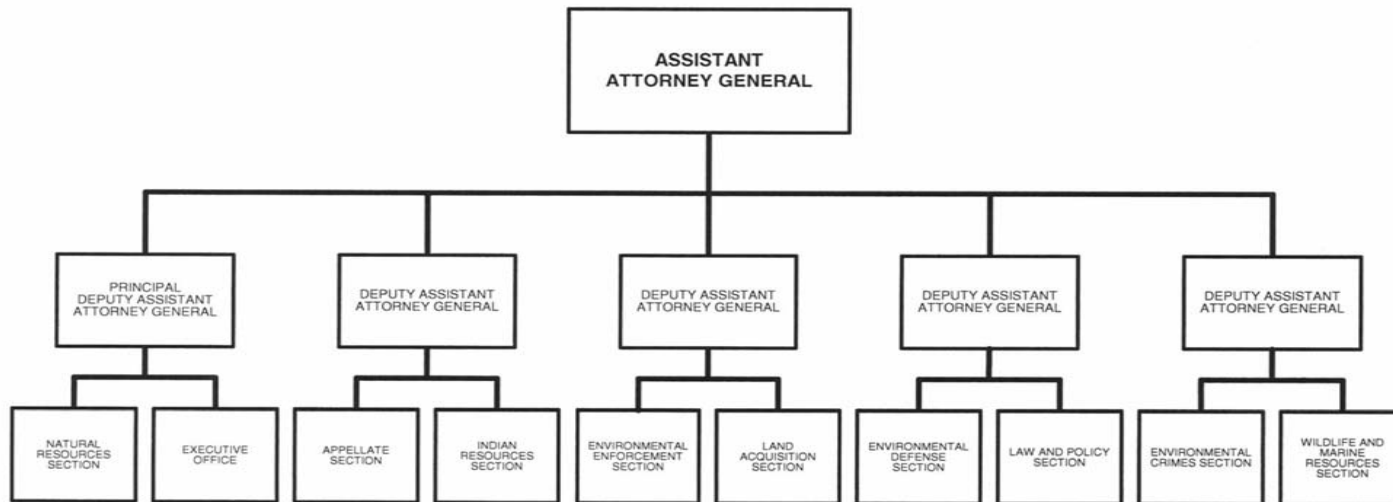
Non-Personnel Decrease Cost Summary

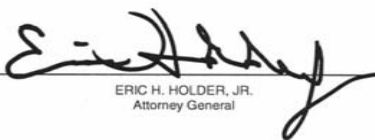
	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Technology Refresh	0	0	0	0	(\$47)	(\$47)

VII. Exhibits

A. Organizational Chart

ENVIRONMENT AND NATURAL RESOURCES DIVISION



Approved by:  Date April 26, 2010
ERIC H. HOLDER, JR.
Attorney General

B. Summary of Requirements

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

	FY 2012 Request		
	Perm. Pos.	FTE	Amount
2010 Enacted (with Rescissions, direct only)	459	507	109,785
2010 Supplementals	10	10	5,000
Total 2010 Enacted (with Rescissions and Supplementals)	469	517	114,785
2011 Continuing Resolution (direct only)	459	507	109,785
2011 Supplementals			
Total 2011 CR (with Rescissions)	459	507	109,785
Adjustments to Base			
Transfers:			
Transfer to Professional Responsibility Advisory Office (PRAO)			(185)
Transfer to Office of Information Policy (OIP)			(22)
Subtotal Transfers			(207)
Increases:			
Pay and Benefits	10	16	3,184
Domestic Rent and Facilities			1,048
Other Adjustments	120	61	3,600
Subtotal Increases	130	77	7,832
Total Adjustments to Base	130	77	7,625
2012 Current Services	589	584	117,410
Program Changes			
Offsets:			
Administrative Efficiencies			(119)
Technology Refresh Extension			(47)
Subtotal, Offsets			(166)
Total Program Changes	0	0	(166)
2012 Total Request	589	584	\$117,244
2010 - 2012 Total Change	120	67	2,459

Exhibit B

B. Summary of Requirements (Cont.)

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

Estimates by budget activity	2010 Appropriation Enacted w/Rescissions and Supplementals			2011 Continuing Resolution (CR)			2012 Adjustments to Base and Technical Adjustments			2012 Current Services			2012 Increases			2012 Offsets			2012 Request		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Civil Litigation	422	465	103,307	413	456	98,806	130	77	7,625	543	533	106,431	0	0	0	0	0	(166)	543	533	106,265
Criminal Litigation	47	52	11,478	46	51	10,979		0	0	46	51	10,979	0	0	0	0	0	0	46	51	10,979
Total	469	517	\$114,785	459	507	\$109,785	130	77	\$7,625	589	584	\$117,410	0	0	\$0	0	0	(\$166)	589	584	\$117,244
Reimbursable FTE		184			184						123										123
Total FTE		701			691			77			707			0			0				707
Other FTE:																					
LEAP																					
Overtime																					
Total Comp. FTE		701			691			77			707			0			0				707

C. Program Increases/Offsets by Decision Unit

FY 2012 Program Increases/Offsets By Decision Unit
Environment & Natural Resources Division
(Dollars in Thousands)

Program Offsets	Location of Description by Decision Unit					Total Offsets
		Pos.	Agt./Atty.	FTE	Amount	
Administrative Efficiencies	Civil Litigation	0	0	0	(119)	(119)
Technology Refresh Extension	Civil Litigation				(47)	(47)
						0
						0
Total Program Offsets		0	0	0	(\$166)	(\$166)

D. Resources by DOJ Strategic Goal/Objective

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

(Dollars in Thousands)

Strategic Goal and Strategic Objective	2010 Appropriation Enacted w/Rescissions and Supplementals		2011 Continuing Resolution (CR)		2012 Current Services		2012				2012 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	701	114,785	691	109,785	707	117,410				(166)	707	117,244
	701	114,785	691	109,785	707	117,410	0	0	0	(166)	707	117,244
GRAND TOTAL	701	\$114,785	691	\$109,785	707	\$117,410	0	\$0	0	(\$166)	707	\$117,244

E. Justification for Base Adjustments

Justification for Base Adjustments Environment & Natural Resources Division

Transfers

	<u>POS</u>	<u>FTE</u>	<u>Amount</u>
<u>Transfer:</u> The component transfer for the Professional Responsibility Advisory Office (PRAO) into the General Administration appropriation will centralize appropriated funding and eliminate the current reimbursable financing process. The centralization of the funding is administratively advantageous because it eliminates the paper-intensive reimbursement process. The FY 2012 transfer amount for PRAO is based on the FY 2010 actual costs plus standard inflation per year (the average increase over the past three years) to bridge to FY 2012 amount. The amount per component is based on the average percentage of total costs paid by that component since 2007.	0	0	\$ (185,000)
<u>Transfer:</u> The component transfer for the Office of Information Policy (OIP) into the General Administration appropriation will centralize appropriated funding and eliminate the current reimbursable financing process. The centralization of the funding is administratively advantageous because it eliminates the paper-intensive reimbursement process. The FY 2012 transfer amount for OIP is based on the FY 2010 actual costs plus standard inflation per year (the average increase over the past three years) to bridge to FY 2012 amount. The amount per component is based on the average percentage of total costs paid by that component since 2007.	0	0	\$ (22,000)
Total Transfers:	0	0	\$ (207,000)
<u>Increases</u>			
<u>Annualization of 2010 pay raise:</u> This pay annualization represents first quarter amounts (October through December) of the 2010 pay increase of 2.0 percent, for which funds were not provided under the FY 2011 CR. Together with resources provided in 2010 for the pay raise, the \$554,000 requested represents the pay requirements for the full year of the 2010 enacted pay raise (\$395,002 for pay and \$158,998 for benefits).	0	0	\$ 554,000
<u>Annualization of additional positions approved in 2010 and 2011:</u> This provides for the annualization of 16 additional positions appropriated in 2010. Annualization of new positions extends to 3 years to provide for entry level funding in the first year with a 2-year progression to the journey man level. For 2010 increases, this request includes an increase of \$2,547,000 for full-year payroll costs and an increase of \$3,600,000 of nonpay costs associated with these additional positions.	10	16	\$ 6,147,000

Exhibit E

E. Justification for Base Adjustments (Cont.)

	2010 Increases (\$000)	Annualization Required for 2012 (\$000)
Annual salary rate of 6 new positions	1332	
Annual salary rate of 10 new positions	1215	
Less lapse (50 %)		
Net Compensation	2547	0
Associated employee benefits		
Travel		
Transportation of Things		
Communications/Utilities		
Printing/Reproduction		
Other Contractual Services:		
25.2 Other Services	3600	
25.3 Purchase of Goods and Services from Government Accts.		
25.4 Operation and Maintenance of Facilities		
25.6 Medical Care		
Supplies and Materials		
Equipment		
TOTAL COSTS SUBJECT TO ANNUALIZATION	6147	0

	<u>POS</u>	<u>FTE</u>	<u>Amount</u>
<u>Retirement:</u> 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 1.3 percent per year. The requested increase of \$128,000 is necessary to meet our increased retirement obligations as a result of this conversion.	0	0	\$ 128,000
<u>Employees Compensation Fund:</u> The \$15,000 decrease 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.	0	0	\$ (15,000)

E. Justification for Base Adjustments (Cont.)

<u>Health Insurance:</u> Effective January 2012, this component's contribution to Federal employees' health insurance premiums increased by 7.9 percent. Applied against the 2011 estimate of \$3,473,000, the additional amount required is \$275,000.	0	0	\$ 275,000
<u>Changes in Compensable Days:</u> The decreased cost for one compensable day in FY 2012 compared to FY 2011 is calculated by dividing the FY 2011 estimated personnel compensation \$67,971 and applicable benefits \$11,740 by 261 compensable days.	0	0	\$ (305,000)
<u>General Services Administration (GSA) Rent:</u> GSA will continue to charge rental rates that approximate those charged to commercial tenants for equivalent space and related services. The requested increase of \$1,001,000 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 2012 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.	0	0	\$ 1,001,000
<u>DHS Security Charges:</u> The Department of Homeland Security (DHS) will continue to charge Basic Security and Building Specific Security. The requested increase of \$47,000 is required to meet our commitment to DHS, and cost estimates were developed by DHS.	0	0	\$ 47,000
	Total Increase:	10	16
		Total ATB:	\$ 7,832,000
		10	16
			\$ 7,625,000

F. Crosswalk of 2010 Availability

Crosswalk of 2010 Availability
 Environment & Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

Decision Unit	FY 2010 Enacted Without Rescissions			Supplementals			Reallocations			2010 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Civil Litigation	413	456	98,806			5,000			1,200	413	456	105,006
Criminal Litigation	46	51	10,979	10	10					56	61	10,979
TOTAL	459	507	\$109,785	10	10	\$5,000	0	0	\$1,200	469	517	\$115,985
Reimbursable FTE											184	
Total FTE		691			10			0			701	
Other FTE												
LEAP											0	
Overtime	184										0	
Total Compensable FTE		691			10			0			701	

Supplementals:

CIV and ENRD each received \$5M as part of the Supplemental Appropriations Act, 2010 (P.L. 111-212) for funding relating to the Deepwater Horizon oil spill.

Reallocations:

Funding of \$8,503K was distributed from GLA's ALS account to the components' ALS accounts.

G. Crosswalk of 2011 Availability

Crosswalk of 2011 Availability
 Environment & Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

Decision Unit	FY 2011 CR Without Rescissions			Carryover Amount	2011 Availability		
	Pos.	FTE	Amount		Pos.	FTE	Amount
Civil Litigation	413	456	98,806	5,000	413	456	103,806
Criminal Litigation	46	51	10,979		46	51	10,979
TOTAL	459	507	\$109,785	\$5,000	459	507	\$114,785
Reimbursable FTE						184	
Total FTE		691				691	
Other FTE							
LEAP						0	
Overtime	184					0	
Total Compensable FTE		691				691	

H. Summary of Reimbursable Resources

Summary of Reimbursable Resources

Environment & Natural Resources Division

Salaries and Expenses

(Dollars in Thousands)

Collections by Source	2010 Actual			2011 Planned			2012 Request			Increase/Decrease		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Department of Agriculture			425			609			2,000	0	0	1,575
Department of Commerce			5			5			14	0	0	9
Department of Defense			481			702			1,073	0	0	592
Department of Energy			0			0			15	0	0	15
Department of Homeland Security			314			400			218	0	0	(96)
Department of Interior			3,811			4,151			3,500	0	0	(311)
Department of Justice			13,351			17,751			14,000	0	0	649
Department of State			21			228			70	0	0	49
Department of Treasury			70			70			10	0	0	(60)
Environmental Protection Agency		184	28,220		184	28,220		123	27,370	0	(61)	(850)
Federal Trade Commission			1,054			1,066			850	0	0	(204)
Securities and Exchange Commission			5,006			5,413			5,300	0	0	294
Others			1,259			1,385			1,580	0	0	321
Budgetary Resources:	0	184	\$54,017	0	184	\$60,000	0	123	\$56,000	0	(61)	\$1,983

Exhibit H

I. Detail of Permanent Positions by Category

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

Category	2010 Enacted w/Rescissions and Supplementals		2011 Continuing Resolution (CR)		2012 Request					
	Total Authorized	Total Reimbursable	Total Authorized	Total Reimbursable	ATBs/Revised Display	Program Increases	Total Pr. Changes	Total Authorized	Revised Reimbursable Display	Total Reimbursable
Intelligence Series (132)	0	0	0	0	0	0	0	0	0	0
Personnel Management (200-299)	8	1	8	1	2	0	0	10	0	1
Clerical and Office Services (300-399)	55	35	55	35	14	0	0	69	(12)	23
Accounting and Budget (500-599)	7	0	7	0	2	0	0	9	0	0
Attorneys (905)	333	110	323	110	93	0	0	416	(36)	74
Paralegals / Other Law (900-998)	47	38	47	38	13	0	0	60	(13)	25
Information & Arts (1000-1099)	0	0	0	0	0	0	0	0	0	0
Business & Industry (1100-1199)	5	0	5	0	1	0	0	6	0	0
Library (1400-1499)	0	0	0	0	0	0	0	0	0	0
Equipment/Facilities Services (1600-1699)	0	0	0	0	0	0	0	0	0	0
Miscellaneous Inspectors Series (1802)	0	0	0	0	0	0	0	0	0	0
Criminal Investigative Series (1811)	0	0	0	0	0	0	0	0	0	0
Supply Services (2000-2099)	0	0	0	0	0	0	0	0	0	0
Motor Vehicle Operations (5703)	0	0	0	0	0	0	0	0	0	0
Information Technology Mgmt (2210)	14	0	14	0	5	0	0	19	0	0
Security Specialists (080)	0	0	0	0	0	0	0	0	0	0
Miscellaneous Operations (010-099)	0	0	0	0	0	0	0	0	0	0
Total	469	184	459	184	130	0	0	589	(61)	123
Headquarters (Washington, D.C.)	418	163	408	163	116	0	0	524	(54)	109
U.S. Field	51	21	51	21	14	0	0	65	(7)	14
Foreign Field	0	0	0	0	0	0	0	0	0	0
Total	469	184	459	184	130	0	0	589	(61)	123

* 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.

J. Financial Analysis of Program Changes

Financial Analysis of Program Changes

Environment & Natural Resources Division

Salaries and Expenses

(Dollars in Thousands)

	Administrative Efficiencies		Technology Refresh Extension		Program Changes	
	Pos.	Amount	Pos.	Amount	Pos.	Amount
Grades:						
GS-15		0		0	0	0
GS-14		0		0	0	0
GS-7		0		0	0	0
GS-9		0		0	0	0
Total positions & annual amount	0	0	0	0	0	0
Lapse (-)	0	0	0	0	0	0
Other personnel compensation						
Total FTE & personnel compensation	0	0	0	0	0	0
Personnel benefits		0		0	0	0
Travel and transportation of persons		0		0	0	0
Transportation of things		0		0	0	0
Communication, rents, and utilities		0		0	0	0
Printing		(119)		0	0	(119)
Other services		0		(47)	0	(47)
Supplies and materials		0		0	0	0
Equipment		0		0	0	0
Total, 2012 program changes requested	0	(\$119)	0	(\$47)	0	(\$166)

Exhibit J

K. Summary of Requirements by Grade

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

Grades and Salary Ranges	2010 Enacted w/Rescissions and Supplementals		2011 Continuing Resolution (CR)		Impact of Revised Display		Proposed Increase		2012 Request		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
SES, \$119,554 - 179,700	18		18		5		0		23		5	
GS-15, \$123,758 - 155,500	278		268		76		0		344		76	
GS-14, \$105,211 - 136,771	29		29		8		0		37		8	
GS-13, \$89,033 - 115,742	24		24		7		0		31		7	
GS-12, \$74,872 - 97,333	19		19		5		0		24		5	
GS-11, \$62,467 - 81,204	26		26		7		0		33		7	
GS-10, \$56,857 - 73,917	2		2		1		0		3		1	
GS-9, \$51,630 - 67,114	28		28		8		0		36		8	
GS-8, \$46,745 - 60,765	19		19		5		0		24		5	
GS-7, \$42,209 - 54,875	17		17		5		0		22		5	
GS-6, \$37,983 - 49,375	1		1		0		0		1		0	
GS-5, \$34,075 - 44,293	1		1		0		0		1		0	
GS-4, \$30,456 - 39,590	4		4		1		0		5		1	
GS-3, \$27,130 - 35,269	3		3		1		0		4		1	
GS-2, \$24,865 - 31,292	0		0		0		0		0		0	
GS-1, \$22,115 - 27,663	0		0		0		0		0		0	
Total, appropriated positions	469		459		130		0		589		130	
Average SES Salary		\$177,492		\$181,397						\$185,387		
Average GS Salary		\$115,563		\$118,105						\$119,759		
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	2010 Actuals*		2011 Continuing Resolution (CR)*		2012 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
11.1 Direct FTE & personnel compensation	444	53,711	454	53,780	521	59,543	67	5,763
11.3 Other than full-time permanent	63	8,000	63	8,010	63	8,437	0	427
11.5 Total, Other personnel compensation	0	1,075	0	1,076	0	1,139	0	63
<i>Overtime</i>	0	0	0	0	0	0	0	0
<i>Other Compensation</i>	0	0	0	0	0	0	0	0
11.8 Special personal services payments	0	293	0	293	0	421	0	128
Total	507	63,078	517	63,159	584	69,540	67	6,381
Other Object Classes:								
12.0 Personnel benefits		18,199		18,223		19,598		1,375
13.0 Unemployment		0		0		0		0
21.0 Travel and transportation of persons		2,848		2,852		3,016		164
22.0 Transportation of things		297		298		313		15
23.1 GSA rent		11,953		11,969		14,696		2,727
23.2 Moving/Lease Expirations/Contract Parking		0		0		0		0
23.3 Comm., util., & other misc. charges		1,524		1,526		1,607		81
24.0 Printing and reproduction		106		106		(7)		(113)
25.1 Advisory and assistance services		550		551		580		29
25.2 Other services		9,927		13,738		5,411		(8,327)
25.3 Purchases of goods & services from Government accounts (Antennas, DHS Sec. Etc..)		1,400		1,402		1,477		75
25.4 Operation and maintenance of facilities		0		0		0		0
25.5 Research and development contracts		0		0		0		0
25.7 Operation and maintenance of equipment		0		0		0		0
26.0 Supplies and materials		703		704		741		37
31.0 Equipment		258		259		272		13
42.0 Insurance Claims & Indemnities		0		0		0		0
Total obligations		\$110,844		\$114,785		\$117,244		67 \$2,459
Unobligated balance, start of year				(5,000)		0		0
Reallocations		(1,200)		0		0		0
Unobligated balance, expiring		141		0		0		0
Unobligated balance, end of year		5,000		0		0		0
Total DIRECT requirements		114,785		109,785		117,244		0
Reimbursable FTE:	184		184		123			
Full-time permanent	0	0	0	0	0	0	0	0
23.1 GSA rent (Reimbursable)		2,352		2,352		0		(2,352)
25.3 DHS Security (Reimbursable)		44		44		0		(44)

* ENRD received 10 FTE with the Oil Spill Supplemental (no-year funding). None of the 10 FTE were burned in FY 2010 so they aren't included in the 2010 total. The 10 FTE are included in FY 2011's FTE total.

Exhibit L