

U.S. Department of Justice

Environment and Natural Resources Division



ENRD



ENRD

FY 2015

PERFORMANCE BUDGET

CONGRESSIONAL SUBMISSION

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Cover photo of Assateague Island from DOJ/ENRD Employee Photo Contest. Text boxes and photos are from the National Park Service's Assateague Island National Seashore website. <http://www.nps.gov/asis/index.htm>

I. Overview of the Environment and Natural Resources Division

A. Introduction:

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

The Division is currently organized into nine litigating sections (Appellate; Environmental Crimes; Environmental Defense; Environmental Enforcement; Indian Resources; Land Acquisition; Law and Policy; Natural Resources; and Wildlife and Marine Resources), and an Executive Office that provides administrative support. ENRD has a staff of nearly 650, more than 400 of whom are attorneys.

The Division is guided by its core mission, which has four key elements:

- Strong enforcement of civil and criminal environmental laws to ensure clean air, clean water, and clean land for all Americans;
- Vigorous defense of environmental, wildlife and natural resources laws and agency actions;
- Effective representation of the United States in matters concerning the stewardship of our public lands and natural resources; and
- Vigilant protection of tribal sovereignty, tribal lands and resources, and tribal treaty rights.

To accomplish this mission in FY 2015, the Division is requesting a total of \$112,487,000 including 537 positions (370 attorneys), and 526 Full-Time Equivalent (FTE). ENRD also has 115 reimbursable FTE.

All communities deserve clean air, water and land in the places where they live, work, play and learn. The Division strives to ensure that all communities are protected from environmental harms, including those low-income, minority and tribal communities that too frequently live in areas overburdened by pollution. ENRD pursues the goals of Environmental Justice by ensuring that everyone enjoys the benefit of a fair and even-handed application of the nation's environmental laws, and affected communities have a meaningful opportunity for input in the consideration of appropriate remedies for violations of the law.

ENRD also litigates to protect the Nation's public lands and resources, ensuring that that these lands are protected and the Treasury collects the royalties and payments owed to the United

States. The Division also litigates to protect almost 60 million acres of land, and accompanying natural resources, that the United States holds in trust for tribes and their members.

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

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

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

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



Assateague Island stretches for 37 miles along the Atlantic coasts of Maryland and Virginia and is part of a vast chain of barrier islands extending from Maine to Texas. Changing sea level and migration of offshore sediments play vital roles in forming and maintaining these important coastal features. Barrier islands can form when offshore sand deposits accumulate sufficiently to break the water surface or when sea level rise causes inland dunes to become separated from the mainland. Others form when "spits" deposited across the mouth of a bay eventually break from the mainland.

B. Issues, Outcomes, and Strategies:

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

The Division initiates and pursues legal action to enforce federal pollution abatement laws and obtain compliance with environmental protection and conservation statutes. ENRD also represents the United States in all matters concerning protection, use, and development of the nation's natural resources and public lands. The Division defends suits challenging all of the foregoing laws, and fulfills the federal government's responsibility to litigate on behalf of Indian

tribes and individual Indians. ENRD's legal efforts protect the federal fisc, reduce harmful discharges into the air, water, and land, enable clean-up of contaminated waste sites, and ensure proper disposal of solid and hazardous waste.

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

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

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

The Division's current top enforcement priority is to hold accountable those responsible for the tragic loss of life and disastrous oil spill in the Gulf of Mexico. This priority stems from the impact of the oil spill on the environment and the economy and from the potential scale of civil penalties and natural resource damages due the United States – billions of dollars. Those sums could: (a) benefit natural resources damaged by the spill, (b) fund environmental and economic projects in the Gulf States through the RESTORE Act, and (c) reimburse the Oil Spill Liability Trust Fund (which funds the majority of the federal clean-up and monitoring work necessary to responding to the spill).

While the failures and other un-workmanlike acts that caused this massive oil spill began well before the spill did, the discharges commenced April 20, 2010, with the destruction of the drilling rig Deepwater Horizon, the principal vessel used in constructing the Macondo Well, which is located about 50 miles south of the Louisiana shore. Our enforcement action centers on the discharge of millions of barrels of hydrocarbons into the Gulf of Mexico. Before the three-month-long discharge was halted, millions of barrels of oil (along with large amounts of natural gas) escaped into the Gulf of Mexico and reached, among other places: thousands of square miles of the Gulf, various depths of the water column, the sea floor, shorelines of Gulf States, and many flora and fauna. These discharges caused immense environmental and economic harm to the entire region, on land and in the water. We aim to secure both appropriate civil penalties

for these illegal, avoidable discharges and compensation for damages to natural resources for which federal agencies are trustees under the law. (The Gulf States are co-trustees for some of these resources.)

For over three years, DOJ - principally ENRD in collaboration with the Civil Division - has remained central to the federal response and investigation of this spill. The center of DOJ's work is the ongoing civil enforcement action in district court, in which we have produced some one hundred million pages of documents and completed more than 600 days of deposition. However, such results do not account for the lion's share of necessary case development and trial preparation. Because the defendants face civil penalty and damages judgments that could amount to billions of dollars, the breadth and depth of the defense being mounted is massive. Our principal defendant, BP, has noted to the district court that more than 300 lawyers are working on BP's interests in this litigation.

In the litigation, Phase One and Two of discovery and trial are complete. The trial for the first phase began on February 25, 2013, and lasted for about two months. This phase provided an opportunity for the United States to prove that violations of federal safety operational regulations caused or contributed to the oil spill and that the named defendants (not including insurers) were jointly and severally liable, without limitation, under the Oil Pollution Act for government removal costs, economic losses, and damage to natural resources due to the oil spill. The United States is seeking civil penalties under the Clean Water Act, which prohibits the discharge of oil into the nation's waters. Post-trial submissions were completed during June 2013. All parties await the rulings of the district court.

Phase Two of the trial, focusing on efforts to control the blowout and the amount of oil discharged, concluded in October 2013, with post-trial briefing for that phase concluded in January 2014.

Phase Three is also active and will grow in intensity and cost throughout fiscal year 2014. This phase will focus on the eight penalty factors set out in the Clean Water Act, which will control the ultimate assessment of the specific penalty amounts to be paid by defendants BP and Anadarko. We are working to keep the cost of Phase Three below that of Phases One and Two, but it is unclear whether the defendants will accept streamlined discovery and other pre-trial activities or try to expand them to the extent possible. Factors such as the volume of material potentially subject to discovery and the wide gap in the parties' view of the case continue to drive up the expense of this litigation. At a status conference set for late March 2014, the Court will consider the parties' competing motions and case management plans, which will lead to setting the scope and schedule of Phase Three.

A later phase likely will determine the amount of damages for injuries to natural resources caused by the spill. We know from prior "NRD" cases that they typically involve scores of expert witnesses, and we know from prior document management in Phases One and Two that the amount of documents and data potentially discoverable in this phase could rival the prior phases combined. Phase NRD pre-trial activities are likely to commence before Phase Three is complete. It is anticipated that Phase NRD could last some years. Under any likely scenario we can see, this phase could be tremendously expensive for DOJ, both in terms of DOJ time and

effort and in cash outlays necessary to fund litigation support, for example, document handling and analysis, expert witnesses, and a base of operations in New Orleans. Unlike some earlier phases of the case, we cannot expect help from the private plaintiffs in pre-trial and trial activities, and the range of facts which we may need to prove (spanning whole ecosystems of the Gulf of Mexico and its shores) will rival the amount of proof necessary in any earlier phase of the case. We expect this phase to be the longest running and most expensive. While a number of the States will join us as co-plaintiffs in this phase, it is unclear at this time whether their efforts will lessen ours. DOJ work will continue to take the forms of both (a) advising to the federal-and-state council of natural resource trustees charged by law with assessing the extent of natural resource damages and (b) developing the most effect case possible for proving injury and entitlement to damages needed to restore such injury. It is unclear whether sources that have funded work on the earlier phases of the massive case will be available for the NRD Phase.

The Division is also handling appeals related to the Gulf Oil Spill. BP and Anadarko have also brought an interlocutory appeal from the district court's order holding them liable as owners of the Macondo well for Clean Water Act civil penalties. We are currently in the process of briefing that appeal. In addition, depending on how the trial proceeds, there is the potential for additional appeals because of a statutory provision (28 U.S.C. 1292(a)(3)) allowing certain interlocutory appeals implicating admiralty jurisdiction.

In addition to the ongoing, civil-side efforts, in February 2013, the U.S. District Court for the Eastern District of Louisiana approved a civil enforcement settlement and a criminal-plea agreement proposed by the United States for various Transocean companies – the owners and operators of the Deepwater Horizon. Under those settlements, the Transocean entities will pay penalties and fines totaling \$1.4 billion – a record-setting, \$1 billion in civil penalties (exclusive of the value of injunctive relief) plus another \$400 million in criminal fines and related criminal relief.

Additionally, the Division supported the ongoing interagency administrative response critical to avoiding future disasters and to continuing responsible and safe drilling in the Gulf of Mexico and elsewhere. We successfully resolved a number of high profile and contentious cases filed against client agencies arising from the Deepwater Horizon oil spill.

Finally, ENRD continues to support implementation of the RESTORE Act, under which Congress directed that about 80 percent of all civil penalty proceeds arising from the Deepwater Horizon / Macondo Well disaster be spent by federal or state officials on environmental or economic recovery in the Gulf region. ENRD support takes the form principally of legal advice and coordination.



More than half of Assateague Island National Seashore's 48,000 acres is comprised of near-shore and estuarine waters, and the interplay between these waters and the barrier island affects nearly every aspect of life in this dynamic coastal environment. Powerful storms can dramatically alter the shoreline in a matter of hours, as waves wash over the beach and reshape the island from ocean to bay. Salt spray, lack of fresh water, and isolation from the mainland are subtle, but powerful influences on the Island's species composition. These conditions have produced a community of plants and animals uniquely suited to the extremes found at the edge of the sea.

C. Performance Challenges:

External Challenges

The Division has limited control over the filing of defensive cases, which make up nearly half of our workload. Court schedules and deadlines drive the pace of work and attorney time devoted to these cases. ENRD's defensive caseload is expected to continue to increase in FY 2015 as a result of numerous external factors.

- The Division faces a huge influx of litigation under a 19th Century federal statute, commonly known as "**R.S. 2477**," which "recognized" the "right of way for the construction of highways over public lands, not reserved for public uses." The largest component of this docket is defensive litigation under the Quiet Title Act, 28 U.S.C. § 2409a, in which ENRD defends against claims, mostly by western states and counties, to R.S. 2477 rights-of-way on lands owned by the United States and managed by federal agencies. Since 2011, our R.S. 2477 case load has grown from 12 cases covering 114 roads, to 40 cases – 31 of which are in Utah, but also involving Alaska, California, Idaho, Nevada and North Dakota – covering over 12,000 roads. Our local federal partners have indicated that they do not have resources available to help us litigate these important and time-consuming cases. This caseload involves extensive discovery, 'ancient' historical facts, significant motion practice, and *de novo* trials.
- The Division represents the United States in 26 presently pending Tribal Trust cases in which 46 Indian tribes demand “full and complete” historical trust accountings, monetary compensation for various breaches and mismanagement of trust, and trust reform measures relating to the United States' management of the tribes' trust funds and non-monetary assets. Many of these cases are in settlement negotiations, and others are in varying stages of trial preparation. In FY 2015, for example, the Division expects to face trial in at least three cases. Trials in these cases will require substantial resources not presently available within the Division to conduct extensive discovery and trial related to claims for alleged mismanagement of not only innumerable tribal trust accounts but also extensive non-monetary tribal trust resources between 1946 and the present. The damages sought by the three tribes in the cases on the trial track exceed \$1.4 billion.
- The Environment and Natural Resources Division continues to devote significant resources to condemnation proceedings along the U.S. border with Mexico in support of DHS's Customs and Border Patrol (CBP) efforts to secure the border. 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 2015, 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 2015.

- The Division continues to deal with a dramatic expansion of its **Rails-to-Trails litigation**, in which property owners along railroad corridors allege a taking of their property interests in violation of the Fifth Amendment as a result of the operation of the National Trails System Act (“Trails Act”). The courts have held that the Trails Act precludes abandonment of the corridors under state law, and results in the conversion of the railroad line into thousands of miles of recreational trails, which are also “railbanked” for possible future railroad reactivation. The Division presently defends more than 80 such suits, involving approximately 10,000 properties in over 30 states, with estimated aggregate claims in the hundreds of millions of dollars. These cases present considerable legal challenges, as both the underlying facts and the relevant property law in the various states are generally unfavorable to the United States. These cases also present considerable resource challenges, since each property conveyance and each property valuation must be analyzed on an individual basis. The number of hours the Division devotes to these cases has more than tripled in the past few years and, with many of these cases moving into the valuation stage, the portion of the Division's expert witness funds being applied to these cases has increased several-fold. Given the complexity of the cases, our current rails-to-trails docket will not be fully resolved for several years, and we expect to see many additional such cases being brought against the United States in the coming years.
- ENRD also expects to receive a number of new, unusually cumbersome and increasingly complex civil and criminal environmental enforcement referrals from EPA under the Clean Water Act and Clean Air Act in FY 2014 and FY 2015. For the past decade, the Division has invested significant resources in litigating civil enforcement actions under the Clean Air Act's New Source Review provisions against operators of coal fired power plants. These facilities are the largest stationary sources of air pollution in the country, emitting millions of tons of sulfur dioxide, nitrogen oxides, and particulate matter each year – much of which is illegal. Bringing these plants into compliance with the Act continues to be one of EPA's highest enforcement priorities. Work on these and other power plant cases will continue in earnest in FY 2014 and into 2015. In addition to the reduction of harmful emissions, these cases will continue to result in the imposition of sizeable civil penalties as well as requirements to install important corrective pollution controls.
- The Division continues to be involved in water rights litigation in nearly every western state, protecting the water rights associated with public lands and tribal reservations. These adjudications generally involve thousands of claimants and, in one instance, all of the water rights claimants in a state, and are extremely resource intensive. This litigation is generally non-discretionary, since the United States has waived its sovereign immunity to suit in general stream adjudications. As a result, the United States must assert its water rights claims in such an adjudication.



Plants living on the beach and dunes must withstand some of the harshest conditions. Continuous exposure to strong, salt-laden winds, constantly shifting sands, low substrate moisture, and intense summer heat all contribute to a landscape that is less than 1% vegetated. Plants like sea rocket have fleshy, thick-skinned leaves to store water and withstand the salty environment of the beach and lower dunes. Higher up the dunes, American beachgrass adapts to shifting sands by growing additional stems when buried, thus helping to bind the substrate and reduce erosion.

Internal Challenges

With the introduction of new technologies and new requirements in the legal industry – such as e-filing, on-line document repositories, electronic trials, extranet docketing systems, etc. – we need to ensure our workforce has access to hardware and systems to keep pace.

ENRD expects to refresh aging hardware, develop and implement required tracking systems, and comply with Department security mandates in FY 2015. For example, in 2015, ENRD will replace network printers, our case management system (CMS), and our records management system (RMS). In addition, ENRD will be using a cloud-based email system in FY 2015.



Located along the Atlantic migratory flyway, Assateague Island plays host to a wide variety of both migratory and resident bird species. Because its mid-latitude location is within the migratory routes of both northern and southern species, the island provides a unique opportunity for birders. The island's rich mosaic of forest, dune, and marsh habitats offers feeding and nesting opportunities for a wide array of shorebirds, songbirds, raptors, waterfowl, and waders.

D. Environmental Accountability

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

Energy Use at ENRD

Through ENRD’s Greening the Government Committee, and through other management and staff efforts, ENRD continued to push *Best Practices* which help the Division to minimize energy use, encouraging employees to turn off lights, computer monitors, and other electronic devices when not needed.

In addition, ENRD’s Executive Office, in conjunction with building management, had over 1,200 motion-activated lighting sensors installed in Patrick Henry Building (PHB) ENRD offices and common areas. This improvement has helped reduce energy levels within the building to FY 2006 levels of less than 8,000 kWh in keeping with [Executive Order 13514](#), which focuses on Federal Leadership in Environmental, Energy, and Economic Performance.

The Environment Division's Information Technology (IT) staff is keenly aware of its environmental responsibilities, buying energy efficient hardware before Energy Star became a Federal government mandate. To maximize energy efficiency, our virtual server infrastructure was expanded to our COOP site and field offices (reducing the count of physical servers by 37 percent). In addition, the Division purchased servers with an energy-saving technology that exceeds EPA's Energy Star requirements. Together, these purchases have reduced the Division's power requirements and heat output by 50 percent.



Wildflowers play an important role in the coastal ecosystem of Assateague Island. They serve as food sources for many animals, and their roots aid in the stabilization of sand, securing substrates that might otherwise be eroded by wind. Wildflowers flourish in every habitat on Assateague. Because of continuously changing habitat conditions, plants that can rapidly adjust tend to survive well on the island. Many of Assateague's wildflowers species flourish in disturbed areas such as roadsides. In summer, hundreds of rose mallow line the entrance road with large white blooms. These are joined by collections of yellow, white, purple, or pink flowers produced by various members of the aster family.

E. Achieving Cost Savings and Efficiencies in a Challenging Budget Environment

The Division has demonstrated a commitment to achieve cost savings and has attained impressive measurable results. In the area of litigation support, ENRD has been innovative and forward-thinking with its cost-effective, in-house litigation support computer lab, which provides a wide range of services, such as scanning, OCR-processing, e-Discovery/data processing, email threading, and database creation and Web hosting. In FY 2013, the Division recognized savings of over \$10.2 million, compared to what the in-house services provided would have cost, if outsourced to a contractor/vendor.

By looking at targeted, one-time cost-saving opportunities, as well as implementing a number of long-term operational savings, the Division identified close to \$700,000 in cost-cutting measures during FY 2013. This is on top of the savings carried forward from the Division's earlier cost savings exercise initiated in FY 2011. The Division has realized approximately \$500,000 in savings as a result of cut-backs on monetary performance awards. We have also implemented a number of IT and telecom cost reductions as well as additional subscriptions and publications reductions.

In the area of training, ENRD has not only increased use of in-house resources to conduct legal, technological, and other types of training, but also has aggressively promoted on-line training courses that are no- or low-cost alternatives to more expensive classroom courses. In addition, the Division continues to observe a moratorium on all internal off-site retreats and conferences. Finally, the Division was able to employ additional parking savings measures which over two years will result in cost savings of close to \$100,000.

As a leader employing technological solutions, ENRD has successfully reduced travel by using cost-effective alternatives such as videoconferencing and web-based applications for meetings and limiting travel to only that which is mission critical. We continue to push the use of on-line travel reservations, as opposed to using agent assisted booking services, leading to additional cost savings.



Barrier islands like Assateague are highly dynamic places, as currents and storms work to continuously reshape the land form. Though changing course periodically throughout the year, long shore currents continuously transport sand south along the coast. On a seasonal basis, harsh winter weather pulls sand from dunes and upper beaches, depositing it into offshore sand bars and reducing beach width. This process is reversed during milder summer weather, as gentler wave action acts to restore the shoreline.

II. Summary of Program Changes

	Description			Page	
		Pos.	FTE		Dollars (\$000)
Program Offset	Miscellaneous Program and Administrative Reductions			-\$6,478	34

III. Appropriations Language and Analysis of Appropriations Language

Please refer to the General Legal Activities Consolidated Justifications.

IV. Decision Unit Justification

Environment and Natural Resources Division -	Perm. Pos.	FTE	Amount
2013 Enacted with Rescissions and Sequester	537	526	101,836
2014 Enacted	537	526	107,643
Adjustments to Base and Technical Adjustments	0	0	11,322
2015 Current Services	537	526	118,965
2015 Program Offsets	0	0	-6,478
2015 Request	537	526	112,487
Total Change 2014-2015			4,844

1. Program Description

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

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

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

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

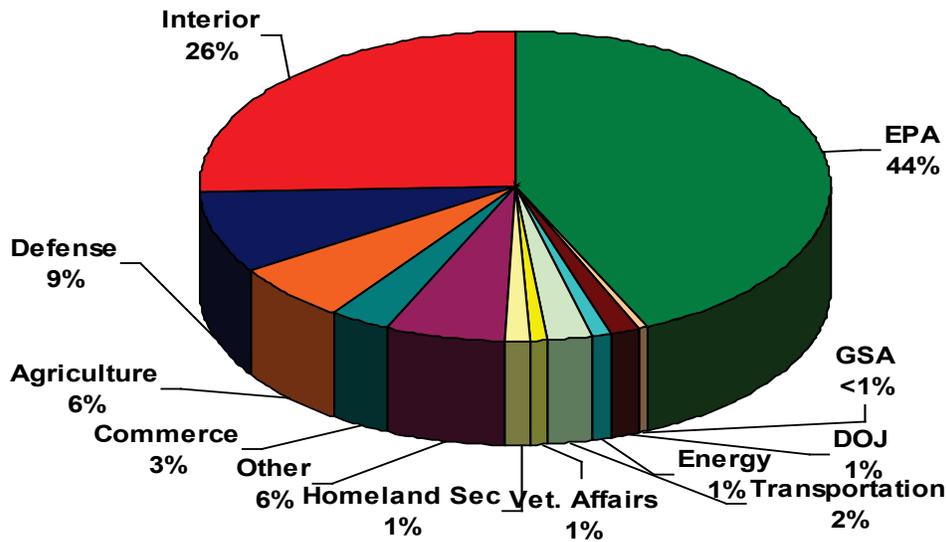
As the nation's chief environmental litigator, ENRD strives to obtain compliance with environmental and conservation statutes. To this end, we seek to obtain redress of past violations that have harmed the environment, establish credible deterrence against future violations of these laws, recoup federal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

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

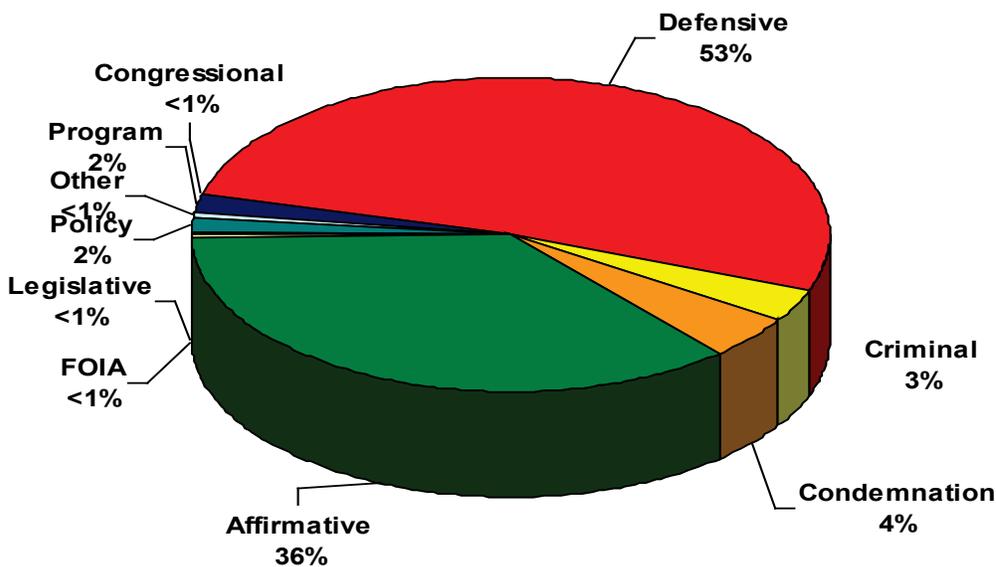


A number of species also find shelter and feeding opportunities in Assateague's forests. During daylight hours, ruby-crowned kinglets, downy woodpeckers, and white-eyed vireos can be found feasting on the abundant insect life. After sunset, several species of owls become active, preying on small mammals, snakes, and birds. They include the great horned owl, one of North America's largest species of owl, as well as the northern saw-whet owl. This diminutive owl (only one-third the size of the great horned owl) overwinters at Assateague. Little is known about the species, and the island serves as the site of several scientific studies on its migratory habits.

ENRD's Cases/Matters Pending By Client Agency (FY 2013)



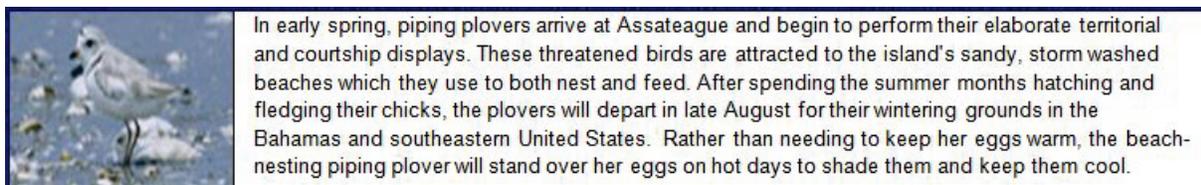
ENRD's Cases/Matters Pending By Case Type (FY 2013)



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 brings eminent domain cases to acquire land for congressionally authorized purposes ranging from national defense to conservation and preservation. Furthermore, the Division assists in fulfillment of the United States trust responsibilities to Indian Tribes. ENRD is heavily involved in defending lawsuits alleging the United States has breached trust responsibilities to Tribes by mismanaging Tribal

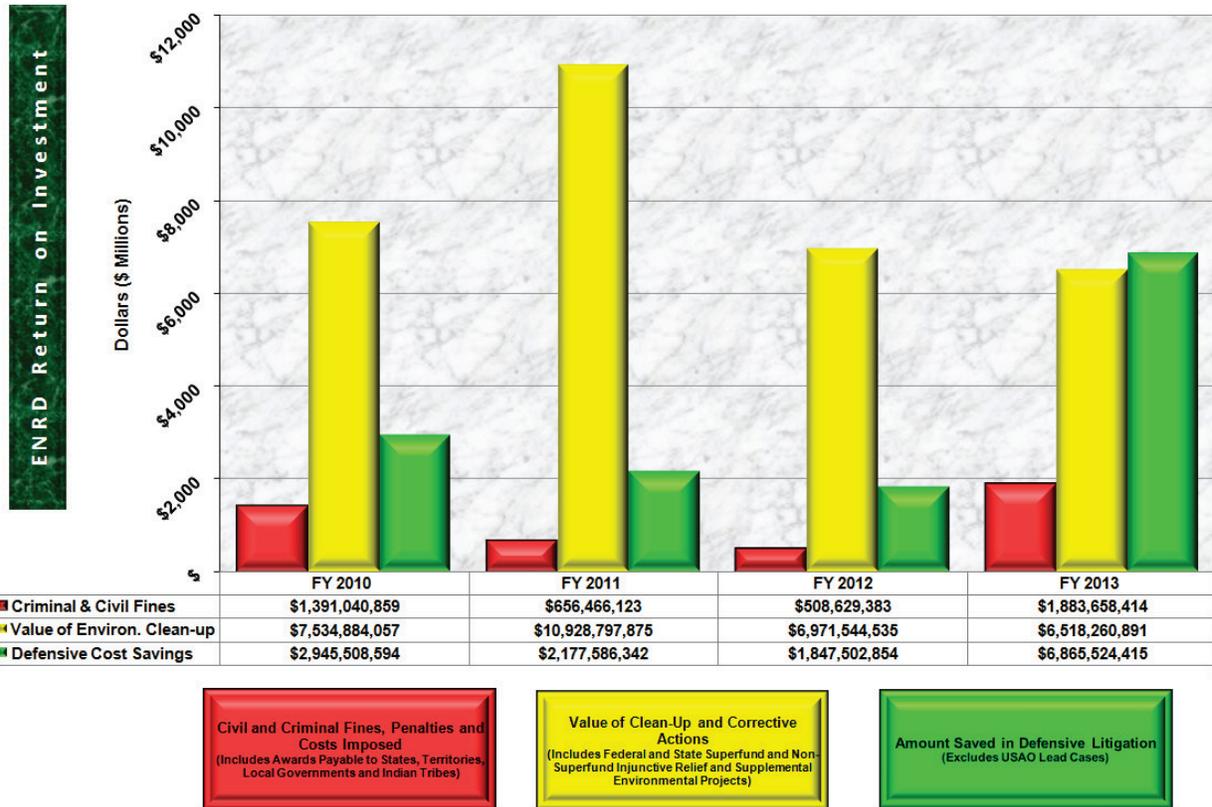
resources and failing to properly administer accounts that receive revenues from economic activity on Tribal lands. The effectiveness of our defensive litigation is measured by the percentage of cases successfully resolved and savings to the federal fisc.

Criminal litigating activities focus on identifying and prosecuting violators of laws protecting wildlife, the environment, and public health. These cases involve 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. ENRD's case outcome performance results are included in the Performance and Resources Table contained in this submission.



ACCOMPLISHMENTS

In FY 2013, the Division successfully litigated 959 cases while working on a total of 6,702 cases, matters, and appeals. We recorded over \$1.8 billion in civil and criminal fines, penalties, and costs recovered. The estimated value of federal injunctive relief (i.e., clean-up work and pollution prevention actions by private parties) obtained in FY 2013 exceeded \$6.5 billion. ENRD's defensive litigation efforts avoided costs (claims) of over \$6.8 billion in FY 2013. The Division achieved a favorable outcome in 92 percent of cases resolved in FY 2013. In sum, ENRD continues to be a valuable investment of taxpayer dollars as the number of dollars returned to the Treasury exceeds ENRD's annual appropriation many times over.



Below are notable successes from the Division’s civil and criminal litigation dockets during FY 2013.

Civil Cases

- ***Deepwater Horizon Oil Spill***

In February 2013, the U.S. District Court for the Eastern District of Louisiana approved settlements fashioned by the Department and federal agency partners to punish various Transocean companies involved in the Deepwater Horizon oil spill. The total civil penalty, criminal fine, and related criminal payments total \$1.4 billion, comprised of a civil penalty of \$1.0 billion, the largest civil penalty ever secured under any federal environmental law, and another \$400 million to be paid under a cooperation-and-guilty-plea agreement with the Transocean company known as Transocean Deepwater, Inc.

Under the civil settlement, the \$1 billion civil penalty will be paid under the Clean Water Act and the Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). The RESTORE Act provides that 80 percent of the civil penalty collected here will be used to fund projects in the five Gulf States, to benefit environmental and economic benefit in that Region. Also under the civil enforcement settlement, which is embodied in a court order, the Transocean Defendants must implement

measures to improve the operational safety and emergency response capability of all their drilling rigs working in the waters of the United States. The Transocean Defendants will be required to conduct these operational measures under court order for at least five years and possibly longer, depending on quality of performance.

The \$400 million, criminal-side payment includes: 1) A criminal fine; 2) Funds to improve environmental resources in the five Gulf States (Alabama, Florida, Louisiana, Mississippi, and Texas); and 3) A fund that will be used by the National Academy of Sciences to select and support research, development, education, and training calculated to reduce the chance of oil spills and to improve capacities for responding to such spills.

On February 17, 2012, the Department and federal agency partners announced an agreement with MOEX Offshore to settle its liability in the Deepwater Horizon oil spill. MOEX is one of eight parties sued by the Department in 2010 in connection with the Deepwater Horizon oil spill. According to the terms of the settlement, MOEX will pay \$70 million in civil penalties to resolve alleged violations of the Clean Water Act—the largest to date under the Clean Water Act—and will spend \$20 million on supplemental environmental projects to facilitate land acquisition projects in several Gulf states that will preserve and protect in perpetuity habitat and resources important to water quality.

- ***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 26 presently pending cases in which 46 Indian tribes demand "full and complete" historical trust accountings, monetary compensation for various breaches and mismanagement of trust, and trust reform measures relating to the United States' management of the tribes' trust funds and trust lands, as well as the non-monetary resources (such as timber, oil, gas, coal, agricultural, range, easements, and rights of way) on those lands. Many of the currently pending cases are in settlement negotiations, while others are in varying stages of trial preparation, and three are proceeding down parallel pre-trial preparation and settlement discussion tracks simultaneously. The Division has enjoyed success in the past two fiscal years by negotiating and reaching settlements with 76 tribes in 46 cases, while also conducting active litigation, including a full-blown trial, in several other cases. It has done so by balancing its duties to defend client programs with a commitment to make whole any tribe that has suffered financial injury as a result of any trust fund or trust resource management practices. The Division is prepared to proceed with alternative dispute resolutions or, if necessary, trial preparations and trial in the remaining 26 cases.

- ***Addressing Air Pollution from Power Plants***

In November 2012, the Division and EPA reached a settlement with Louisiana Generating, an electric generating company owned by NRG Energy Inc., to settle violations of the Clean Air Act at its Big Cajun II coal-fired power plant in New Roads, La. Louisiana Generating is alleged to have violated federal and state law by continuing to operate Big Cajun II Units 1 and 2 without getting the required permits and installing modern air pollution controls after performing

the largest boiler modifications in the history of the plant. The settlement will result in the elimination of over 27,300 tons of harmful emissions per year. Louisiana Generating is required to spend approximately \$250 million to reduce air pollution and pay a civil fine of \$3.5 million. Louisiana Generating will achieve these reductions through a combination of new pollution controls, natural gas conversion and annual emission caps at all three units at the Big Cajun II plant. The state of Louisiana joined in the settlement and will receive \$1.75 million, one-half of the \$3.5 million civil penalty.

Louisiana Generating will also spend \$10.5 million on environmental mitigation projects that will further reduce emissions and benefit communities adversely affected by pollution from the Big Cajun II plant. The numerous projects include: restoring watersheds and forests; installing solar panels at local schools, government-owned facilities or buildings owned by nonprofit groups; creating charging stations for electric vehicles in the South Louisiana area that are supplied with zero emission renewable energy sources; conducting energy efficiency projects, which could include voltage optimization, residential energy efficiency and assistance with commercial or industrial energy efficiency improvements. The state of Louisiana will receive \$1.5 million to implement projects which could include the following: retrofitting vehicles with pollution controls, truck stop electrification, purchase and installation of photo-voltaic cells on buildings, building energy conservation and efficiency, buyback programs for dirty old motors and removal or replacement of oil-fired home heaters with ultra-low sulphur oil and outdoor wood-fired boilers.

The settlement is one of 26 achieved by the federal government under its national enforcement initiative to reduce emissions from coal-fired power plants under the Clean Air Act's New Source Review requirements. SO₂ and NO_x, two key pollutants emitted from power plants, have numerous adverse effects on human health and the environment. These pollutants are converted in the air to fine particles of particulate matter that can cause severe respiratory and cardiovascular impacts, and premature death. SO₂ and NO_x are also significant contributors to acid rain, smog and haze. In addition, air pollution from power plants can drift significant distances downwind, thereby affecting not only local communities, but also communities in a much broader area.

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

In December 2012, ENRD and EPA reached two settlements worth more than \$50 million to clean up contamination from the B.F. Goodrich Superfund Site in San Bernardino County, Calif. There are a dozen settling parties, including Emhart Industries and Pyro Spectaculars, Inc. (PSI), as well as the cities of Rialto and Colton and the County of San Bernardino. The Superfund site has been used to store, test and manufacture fireworks, munitions, rocket motors and pyrotechnics and was added to the EPA's National Priorities List in September 2009. The area's groundwater is contaminated with trichloroethylene (TCE) and perchlorate, which have resulted in the closure of public drinking water supply wells in the communities of Rialto and Colton. TCE is an industrial cleaning solvent. Drinking or breathing high levels may cause damage to the nervous system, liver and lungs. Perchlorate is an ingredient in many flares and fireworks, and in rocket propellant, and may disrupt the thyroid's ability to produce hormones needed for

normal growth and development.

In the first agreement, Emhart is required to perform the first portion of the cleanup, estimated to cost \$43 million over the next 30 years to design, build and operate groundwater wells, treatment systems and other equipment needed to clean up the contaminated groundwater at the site. A significant portion of these funds will come from other settling parties, including the Department of Defense. The cities of Rialto and Colton will receive \$8 million. In the second agreement, six entities, including PSI and its former subsidiary, will pay a combined \$4.3 million to the EPA toward cleanup at the site and \$1.3 million to the cities of Rialto and Colton and San Bernardino County.

EPA used government funds to pay for investigation and clean up work at the site while investigating potentially responsible parties for their role in the contamination. The United States, on behalf of EPA, sued Emhart and PSI, as well as the Goodrich Corporation, and other parties in 2010 and 2011 to require cleanup and recover federal money spent at the site. Prior to EPA's lawsuit, the cities of Rialto and Colton initiated litigation against many of the settling parties, including the Department of Defense, in 2004.

A company acquired by Emhart manufactured flares and other pyrotechnics at the site for the military in the 1950s. PSI has operated at the site since 1979, designing fireworks shows produced throughout the United States.

- ***Addressing Air Pollution From Oil Refineries and other Clean Air Act Cases***

In February 2013, EPA, the Justice Department, and the State of Indiana reached an agreement with CountryMark Refining and Logistics LLC (CountryMark) for the company to pay a \$167,000 civil penalty, perform environmental projects totaling more than \$180,000, and spend \$18 million on new pollution controls to resolve Clean Air Act (CAA) violations at its refinery in Mount Vernon, Indiana. The company is alleged to have made modifications that increased emissions without first obtaining pre-construction permits and installing required pollution control equipment, as required by the CAA. The settlement requires new and upgraded pollution controls, more stringent emission limits, and aggressive leak detection and repair (LDAR) practices. New controls are also required on the refinery's flaring devices, which are used to burn-off waste gases. The amount of pollution that flares emit depends on the total amount of waste gases sent to a flare and the efficiency at which the flare is operated when burning those gases. The settlement will ensure proper combustion efficiency for any gases that are sent to a flare and will also cap the total amount of waste gases that can be sent to a flare at the refinery. The state of Indiana actively participated in the settlement and has received over \$110,000 to fund a supplemental environmental project to remove asbestos-containing material from an old grain elevator in downtown Mount Vernon. CountryMark must provide at least \$70,000 in funding for a supplemental environmental project that will install diesel retrofit and/or idle reduction technologies on school buses and/or non-school bus, publicly-owned vehicles located within 50 miles of the refinery. Once fully implemented, the pollution controls required by the settlement will reduce emissions of harmful air pollution that can cause respiratory problems, such as asthma, and are significant contributors to acid rain, smog, and haze, by an estimated 1,000 tons or more per year.

The settlement with CountryMark is the 32nd under the EPA initiative, which has resulted in 109 refineries operating in 32 states and territories – more than 90 percent of the total refining capacity in the United States – are under judicially enforceable agreements to significantly reduce emissions of pollutants. As a result of the settlement agreements, refiners have agreed to invest more than \$6 billion in new pollution controls designed to reduce emissions of sulfur dioxide, nitrogen oxides, and other pollutants by over 360,000 tons per year.

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

In November 2012, the Division, EPA, and the Mississippi Department of Environmental Quality (MDEQ) reached a comprehensive Clean Water Act settlement with the city of Jackson, Miss. Jackson has agreed to make improvements to its sewer systems to eliminate unauthorized overflows of untreated raw sewage and unauthorized bypasses of treatment at the Savanna Street Wastewater Treatment Plant (WWTP), the city's largest wastewater treatment facility. Jackson is required to implement specific programs designed to ensure proper management, operation and maintenance of its sewer systems. In order to address the problem of wet weather overflows of raw sewage from the sewer lines, Jackson will develop and implement a comprehensive sewer system assessment and rehabilitation program. The city will also develop and implement a comprehensive performance evaluation and composite correction program to reduce the bypasses of treatment at the Savanna Street WWTP. Jackson must develop and implement numerous sewer system capacity, management, operations and maintenance programs, including a pump station operation and preventive maintenance program, a WWTP operation and maintenance program and a water quality monitoring program.

Jackson must pay a civil penalty of \$437,916, and implement a supplemental environmental project valued at \$875,000 that will provide additional environmental benefits to the local community. The project involves reducing the flow of water from entering the sewer system by eliminating illicit stormwater connections and repairing defective private lateral sewer lines from the low-income residential properties.

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

- ***Ensuring Industry Focuses on the Safety of the Public and Protection of the Environment***

In November 2012, the Division and EPA reached an agreement with grain processor Roquette America, Inc., for the company to pay a \$4.1 million civil penalty to settle alleged violations of

the Clean Water Act and its National Pollutant Discharge Elimination System (NPDES) permit at its facility in Keokuk, Iowa. As early as 2008, Roquette was aware that its waste water treatment plant was marginally adequate and that it could not handle spills or surges in loading. Instead of constructing additional containment structures for waste water surges, or routing spills to the waste water treatment plant, Roquette allowed the industrial waste to be discharged directly into the Mississippi River and Soap Creek, in violation of the Clean Water Act. Roquette had received numerous administrative orders and notices of violation from the Iowa Department of Natural Resources since 2000, but continued to overload its waste water treatment plant and illegally discharge untreated industrial waste. The Keokuk facility violated its NPDES permit at least 1,174 times, and on at least 30 occasions illegally discharged via storm drains resulting in at least 250,000 gallons of industrial waste being released into the Mississippi River and Soap Creek. Roquette will complete requirements valued at more than \$17 million to further protect the Mississippi River and Soap Creek, including the completion of a sewer survey to identify possible discharge locations, the implementation of sewer modifications, the construction of upgrades to the wastewater treatment plant, and the performance of enhanced effluent monitoring. Roquette will also obtain annual third party audits of its compliance with the operations and maintenance program, the Storm Water Pollution Prevention Program, the company's NPDES permits, and the compliance requirements set out in the agreement.



The "wild" horses on Assateague are actually feral animals, meaning that they are descendants of domestic animals that have reverted to a wild state. Local folklore describes the Assateague horses as survivors of a shipwreck off the Virginia coast. While this dramatic tale of struggle and survival is popular, there are no records yet that confirm it. They are more likely the descendants of horses that were brought to barrier islands like Assateague in the late 17th century by mainland owners to avoid fencing laws and taxation of livestock. Horses tough enough to survive the scorching heat, abundant mosquitoes, stormy weather and poor quality food have formed a unique wild horse society.

Criminal Cases

- *Vessel Pollution Cases*

Over the past decade, working in conjunction with the U.S. Coast Guard (USCG), ENRD, through the Environmental Crimes Section (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. 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.

In March 2013, in a multi-district plea agreement, two shipping firms based in Germany and Cyprus pleaded guilty to felony obstruction of justice charges and violating the Act to Prevent Pollution from Ships related to the deliberate concealment of vessel pollution from four ships that visited U.S. ports in New Jersey, Delaware and Northern California. Columbia

Shipmanagement (Deutschland) GmbH (CSM-D), a German corporation, and Columbia Shipmanagement Ltd. (CSM-CY), a Cypriot company, have agreed to pay a \$10.4 million penalty and be placed on probation for four years. During probation, the companies will be subject outside audits by an independent company and oversight by a court appointed monitor. The shipping firms admitted that four of their ships (three oil tankers and one container ship) had intentionally bypassed required pollution prevention equipment and falsified the oil record book, a required log regularly inspected by the U.S. Coast Guard. In pleading guilty, the defendants admitted that illegal discharges occurred, including a discharge of five tons of sludge and oily bilge waste within the Exclusive Economic Zone of Costa Rica where a national park is located.

The case is the largest vessel pollution settlement in either New Jersey or Delaware. The proposed penalty includes \$2.6 million in organizational community service payments to assist the coastal maritime environment in New Jersey and Delaware damaged by Hurricane Sandy.

- ***Enforcing Laws Protecting Wildlife***

In order to protect certain species of wildlife against over-exploitation, the United States is a signatory to an international treaty known as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), under which trade in certain threatened species is regulated or even prohibited for commercial purposes. Federal law also prohibits the importation of fish or wildlife into the United States without proper declaration to both U.S. Customs and Border Protection (CBP) and the Fish & Wildlife Service (FWS).

In May 2013, two defendants were sentenced to prison for crimes related to illegal international trafficking of rhinoceros, including conspiracy, smuggling, violations of the Lacey Act, money laundering and tax fraud. The defendants and their company were ordered to pay criminal fines, a tax fraud penalty and assessment, and a total of \$800,000 in restitution to the Multinational Species Conservation Fund, a statutorily created fund that is managed by the U.S. Fish and Wildlife Service (FWS) to support international efforts to protect and conserve rhinos and other critically endangered species around the world. The defendants conspired with individuals throughout the United States to purchase white and black rhinoceros horn despite knowing that these animals were protected by federal law as endangered and threatened species. Although they paid on average, from \$5,000 to \$7,000 per pound of rhinoceros horn, the horn acquired by the defendants had a fair market value of at least \$1 million to \$2.5 million. FWS agents seized rhinoceros mounts and horns, \$1 million in cash, approximately \$1 million in gold ingots, jewelry, watches and precious stones, and two vehicles from the defendants and their co-conspirators. The defendants admitted that they purchased the horns in order to export them overseas to be sold and made into libation cups or used for traditional medicine; made illegal payments to Vietnamese customs officials to ensure clearance of horn shipments to that country; and knowingly evaded income taxes owed in 2009 and 2010. This prosecution is the result of “Operation Crash,” an ongoing FWS-led investigation of the black market rhino horn trade named for the term used to describe a herd of rhinoceros.

With no known predators other than humans, rhinoceros are a prehistoric species and one of the largest herbivores on earth. All rhinoceros species are protected under U.S. and international law, and the black rhinoceros is listed as endangered. Despite national and international

protection efforts dating back to 1976, the demand for rhino horn and black market prices have skyrocketed in recent years due to the value that some cultures have placed on the horns for ornamental carvings, good luck charms or alleged medicinal purposes. This has led to a decimation of the global rhinoceros population, which has declined by more than 90 percent since 1970.

- ***Protecting the Public from Fraud***

In May 2013, a Louisiana woman was sentenced to 57 months in prison for providing fraudulent hazardous waste safety training in the wake of the Deepwater Horizon explosion and spill. The defendant had previously pleaded guilty to impersonating a high-ranking Occupational Safety and Health Administration (OSHA) hazardous waste safety instructor and inspector. In reality, the defendant had no connection to OSHA, to the cleanup effort, nor did she have training in hazardous waste safety. According to court documents, she targeted the Southeast Asian fishing communities in southern Louisiana, many of whom did not speak or read English, and who were seeking other means of employment after the closure of many shrimp grounds. After convincing young bilingual individuals from Southern Louisiana that she could be a source of employment for their struggling communities, she used those individuals to publicize her fraudulent trainings throughout the Vietnamese, Cambodian and Laotian neighborhoods, charging at least 950 victims between \$150 and \$300 cash per class. The defendant claimed her classes satisfied the various safety requirements that all individuals were to complete in order to be employed at a Deepwater Horizon hazardous waste cleanup site. Her classes lasted as little as two hours, while the legitimate certifications would take at least six days of classroom training followed by three days of on-site training. After a short presentation in English, attendees received false completion certifications and were told to ready their vessels for BP cleanup work, which she claimed would be coming any day. At least some attendees later gained access to hazardous waste cleanup sites based on these fraudulent certifications.

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

In May 2013, Mississippi-based Hancock County Land LLC (HCL) pleaded guilty to the unpermitted filling of wetlands near Bay St. Louis, Miss., and agreed to pay a \$1 million fine and take remedial measures for two felony violations of the Clean Water Act. HCL admitted causing the unauthorized excavation and filling of wetlands on a 1,710 acre parcel of undeveloped property in Hancock County. Despite knowing that as much as 80 percent of the land was federally protected wetland connected by streams and bayous to the Gulf of Mexico, HCL hired an excavation contractor to trench, drain and fill large portions of the property. Without having obtained a permit from the Army Corps of Engineers as required under the Clean Water Act, this activity destroyed the wetland. Such permits typically require that developers protect and preserve other wetlands to compensate for those they are permitted to fill and destroy. HCL agreed and was ordered to pay to the federal government a total penalty of \$1 million, and to restore and preserve the damaged wetlands, and to donate property to be preserved in perpetuity. HCL is also required to fund its management and maintenance, to pay \$100,000 toward the litigation costs of the Gulf Restoration Network, and to pay a civil penalty to the U.S. Treasury of \$95,000.

2. Performance and Resources Table

Performance and Resources Table (\$000's)												
Decision Unit: Environment & Natural Resources Division												
RESOURCES and WORKLOAD 1/	Strategic Objective	Target		Actual		Projected		Changes		Requested (Total)		
		FY 2013		FY 2013		FY 2014		Current Services Adjustments and FY 2015 Program Changes		FY 2015 Request		
DIVISION TOTAL WORKLOAD	# of Cases & Matters (Active & Closed)	5,418		6,702		5,418				5,418		
	# of Cases Successfully Resolved/Success Rate	no estimate	83%	890	95%	no estimate	83%			no estimate	83%	
CIVIL	1. Number of cases (active & closed)	2.6, 3.8	4,864	5,995	4,864					4,864		
	2. Number of matters (active & closed)	2.6, 3.8	220	379	220					220		
CRIMINAL	3. Number of cases (active & closed)	2.6, 3.8	320	283	320					320		
	4. Number of matters (active & closed)	2.6, 3.8	14	45	14					14		
			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
DIVISION RESOURCES	<i>Total Year Costs & FTE's (Reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total.)</i>		626	\$ 101,836	626	\$ 101,836	641	\$ 107,643	-	\$ 4,844	641	\$ 112,487
				[23,050]		[23,050]		[23,050]				[23,050]

Program Activity	PERFORMANCE/RESOURCES	FY 2013		FY 2013		FY 2014		Current Services Adjustments and FY 2015 Program Changes		FY 2015 Request		
		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	
CIVIL	TOTAL COSTS & FTE	583	\$ 91,652	583	\$ 91,652	588	\$ 96,879	-	\$ 4,360	588	\$ 101,238	
	OUTPUT MEASURES 1/	Active	Closed	Active	Closed	Active	Closed	Active	Closed	Active	Closed	
	1. Number of cases active/closed	2.6, 3.8	3,221	1,657	3,441	1,762	3,202	1,650		3,202	1,650	
	2. Number of matters active/closed	2.6, 3.8	171	85	136	117	140	80		140	80	
	EFFICIENCY MEASURES											
	1. Total Dollar Value Awarded per \$1 of Expenditures (Affirmative)	2.6, 3.8	\$ 81		\$ 109		\$ 81				\$ 81	
	2. Total Dollars Saved the Government per \$1 of Expenditures (Defensive)	2.6, 3.8	\$ 22		\$ 26		\$ 22				\$ 22	
	OUTCOMES*		# Resolved	Success Rate	# Resolved	Success Rate				# Resolved	Success Rate	
	1. Affirmative cases successfully resolved	2.6, 3.8		85%	325	98%		85%	no estimate	no estimate	no estimate	85%
	2. Defensive cases successfully resolved	2.6, 3.8		75%	511	92%		75%	no estimate	no estimate	no estimate	75%
	3. Penalties Awarded 2/ *		Superfund 3/	Non-Superfund	Superfund 3/	Non-Superfund	Superfund 3/	Non-Superfund			Superfund 3/	Non-Superfund
	- Federal	2.6, 3.8	no estimate	no estimate	\$ 41,000	\$ 232,597,785	no estimate	no estimate			no estimate	no estimate
	- State	2.6, 3.8	no estimate	no estimate	127,120	65,110,208	no estimate	no estimate			no estimate	no estimate
	4. Clean-up Costs Awarded 4/											
	- CERCLA Federal Cost Recovery 5/	2.6, 3.8	no estimate	no estimate	132,442,638	32,753,974	no estimate	no estimate			no estimate	no estimate
	- Federal Injunctive Relief	2.6, 3.8	no estimate	no estimate	118,571,300	6,794,037,613	no estimate	no estimate			no estimate	no estimate
	- CERCLA State Cost Recovery	2.6, 3.8	no estimate	no estimate	7,154,204	1,244,613	no estimate	no estimate			no estimate	no estimate
	- State Injunctive Relief	2.6, 3.8	no estimate	no estimate	5,000,000	500,000	no estimate	no estimate			no estimate	no estimate
	5. Supplemental Environmental Projects (SEP's) 6/											
	- Value of Federal SEP's	2.6, 3.8	no estimate	no estimate	-	34,228,257	no estimate	no estimate			no estimate	no estimate
	- Value of State SEP's	2.6, 3.8	no estimate	no estimate	-	1,261,000						
	6. Environmental Mitigation Projects 7/											
	7. Costs Avoided (Saved the U.S. in Defense Cases) 7/	2.6, 3.8	no estimate	no estimate	\$ -	\$ 1,847,502,854	no estimate	no estimate			no estimate	no estimate

Performance and Resources Table (Cont.)

Program Activity	PERFORMANCE/RESOURCES	FY 2013		FY 2013		FY 2014		Current Services Adjustments and FY 2015 Program Changes		FY 2015 Request		
		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	
CRIMINAL	TOTAL COSTS & FTE	53	\$ 10,184	53	\$ 10,184	53	\$ 10,764		\$ 484	53	\$ 11,249	
	OUTPUT MEASURES 1/	Active	Closed	Active	Closed			Active	Closed	Active	Closed	
	1. Number of cases active/closed	2.6, 3.8	266	101	207	106	220	100			220	100
	2. Number of matters active/closed	2.6, 3.8	11	3	12	1	9	5			9	5
	OUTCOMES*		# Resolved	Success Rate	# Resolved	Success Rate	# Resolved	Success Rate			# Resolved	Success Rate
	1. Number of criminal cases successfully resolved	2.6, 3.8	no estimate	90%	54	98%	no estimate	90%			no estimate	90%
	2. Dollars Awarded		Superfund 3/	Non-Superfund	Superfund 3/	Non-Superfund	Superfund 3/	Non-Superfund			Superfund 3/	Non-Superfund
	- Fines 8/	2.6, 3.8	no estimate	no estimate		\$ 27,615,412	no estimate	no estimate			no estimate	no estimate
	- Restitution	2.6, 3.8	no estimate	no estimate		4,104,428	no estimate	no estimate			no estimate	no estimate
	- Community Service Funds 9/	2.6, 3.8	no estimate	no estimate		5,438,000	no estimate	no estimate			no estimate	no estimate
	3. Criminal Environmental Compliance Plan 10/	2.6, 3.8	no estimate	no estimate		\$ 846,365	no estimate	no estimate			no estimate	no estimate

Data Definition, Validation, Verification, and Limitations:

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

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

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

3/ CERCLA is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Funds from the Environmental Protection Agency (EPA) used to enforce this statute are called "Superfund". Monies in the "Superfund" category replenish this 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 the estimated cost to the defendant of court ordered clean up of contaminated sites.

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

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

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

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

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

10/ 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

Additional Explanation for Targets, Program Changes, and Program Requests

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

Performance Measure Table

PERFORMANCE MEASURE TABLE										
Decision Unit: Environment and Natural Resources Division										
Strategic Objectives	Performance Report and Performance Plan Targets		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2013	FY 2014	FY 2015
			Actual	Actual	Actual	Actual	Target	Actual	Target	Target
2.6, 3.8	EFFICIENCY Measure	Total dollar value awarded per \$1 of expenditures (Affirmative)	\$46	\$125	\$174	\$109	\$81	\$117	\$81	\$81
2.6, 3.8	EFFICIENCY Measure	Total dollars saved the government per \$1 of expenditures (Defensive)	\$27	\$43	\$30	\$26	\$22	\$107	\$22	\$22
2.6, 3.8	OUTCOME Measure	Civil affirmative cases successfully resolved	97%	96%	98%	98%	85%	98%	85%	85%
2.6, 3.8	OUTCOME Measure	Civil defensive cases successfully resolved	96%	88%	92%	92%	75%	87%	75%	75%
2.6, 3.8	OUTCOME Measure	Criminal cases successfully resolved	91%	86%	98%	98%	90%	95%	90%	90%
2.6, 3.8	OUTCOME Measure	Cases and Matters (Active & Closed)	6,948	6,589	6,363	5,782	5,418	6,702	5,418	5,418

3. Performance, Resources, and Strategies

The Environment and Natural Resources Division contributes to the Justice Department's Strategic Goal Two: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law. The Division focuses on both civil and criminal litigation within this strategic objective. An explanation by litigating activity follows.

Criminal Litigating Activities

A. Performance Plan and Report for Outcomes

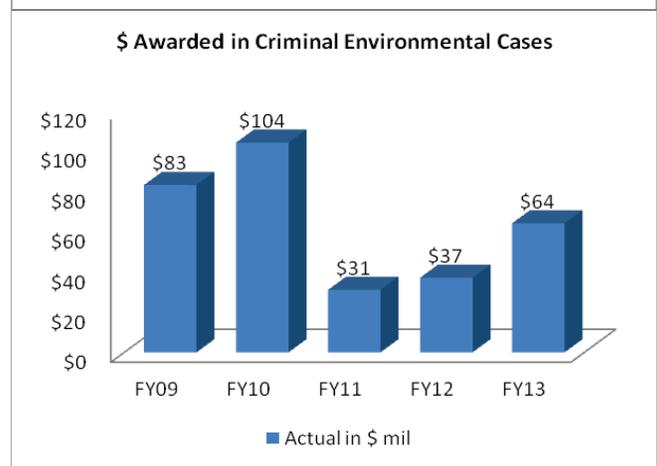
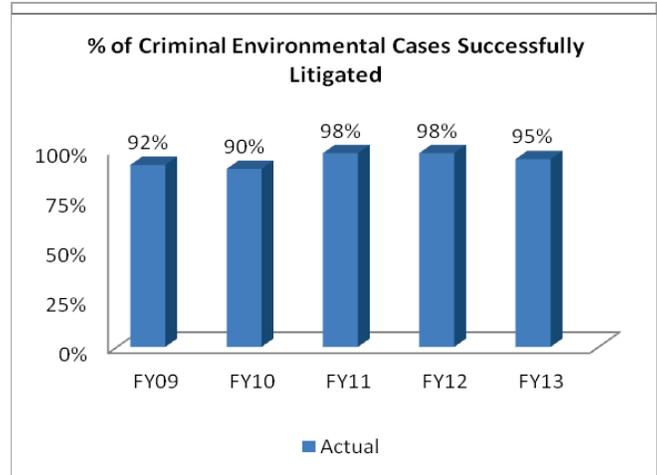
Vigorous prosecution remains the cornerstone of the Department's integrated approach to ensuring broad-based environmental compliance. It is the goal of investigators and prosecutors to discover and prosecute criminals before they have done substantial damage to the environment (including protected species), 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 2013 Target: 90%*

❖ *FY 2013 Actual: 95%*



Data Collection and Storage: A majority of the performance data submitted by ENRD are generated from the Division's Case Management System (CMS). Similarly, EOUSA data are extracted from their 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.

Discussion: In FY 2013, ENRD's Environmental Crimes Section (ECS) had a strong year for criminal enforcement, successfully prosecuting 80 defendants and imposing fines and penalties totaling over \$63 million.

In FY 2013, ECS successfully prosecuted a number of wildlife cases, including one involving illegal trade in black coral. The former president and CEO of GEM Manufacturing LLC, a U.S. Virgin Islands-based company, was the last defendant to be sentenced as the result of a far-reaching investigation. The scheme cost GEM millions of dollars in financial penalties and sent two coral suppliers to prison. The defendant was sentenced to a criminal fine of \$918,950 and one month in jail, to be followed by one month of home confinement and one year of supervised release, including community service and a ban from any business venture involving coral or coral products. He must pay \$229,687 to the University of the Virgin Islands for community service projects designed to research and protect black corals. During his term as CEO, the defendant was responsible for ensuring the continued supply of raw black coral for the manufacture of high-end jewelry. He admitted that he knew his Taiwanese suppliers of black coral could not obtain legitimate CITES certificates. The Taiwanese suppliers would label the coral shipments to GEM as "plastic" in order to fool customs authorities in Hong Kong and the United States.

Black corals are considered important habitat for the deep sea marine environment and are protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Many species have long life spans and are slow-growing. Each of the species of black coral is listed in Appendix II of CITES and is subject to strict trade regulations.

FY 2012 Performance Plan Evaluation: Our success rate of 95 percent exceeded our goal of 90 percent. Proposed legislation and judicial calendars can affect our overall performance, which can then realize peaks and valleys when large cases are decided. Our goal is to improve overall performance in a 5-year span.

FY 2014/2015 Performance Plan: We have set our target at 90 percent of cases successfully litigated for FY 2014 and FY 2015. ENRD targets are generally set at an attainable performance level so that there is no incentive to ramp up prosecutions or lawsuits against insignificant targets for "easy" wins solely to meet higher targets. Such an approach would do a disservice to the public by steering litigation away from more complicated problems facing the country's environment and natural resources.

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

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

❖ *FY 2013 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.*

❖ *FY 2013 Actual: \$64 million*

Discussion: The Environmental Crimes Section continued to prosecute criminal violations of environmental statutes, including the case of *U.S v Watkins Street Project, LLC*. In October 2012, three men were sentenced to federal prison, supervised release, and criminal fines for violations of the Clean Air Act as well as obstruction of justice in relation to salvage and demolition of the former Standard Coosa Thatcher plant. The defendants entered into a year-long scheme in which the plant was illegally demolished while still containing extensive amounts of asbestos. Additionally, they hired homeless and untrained day laborers and paid low wages to them to improperly remove asbestos-containing materials without following federal regulations that were intended to keep the asbestos, a known carcinogen, from becoming airborne where it could be inhaled. Witnesses testified that dust from the salvage and demolition activities frequently wafted onto neighboring properties. The defendants attempted to cover up their illegal activities by falsifying documents and lying to federal authorities investigating the case.

FY 2014/2015 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance for FY 2014 and FY 2015 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 prosecutorial efforts deter others from committing crimes and promote adherence to environmental and natural resources laws and regulations. These efforts result in the reduction of hazardous materials and wildlife violations and improve the quality of the United States' waterways, airways, land, and wildlife, thereby enhancing public health and safety.

B. **Strategies to Accomplish Outcomes**

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

Illegal international trade in wildlife is second in size only to the illegal drug trade, and our criminal prosecutors work directly on these cases, as well as assist United States Attorneys Offices and share ENRD expertise nationwide with state and federal prosecutors and

investigators. We will focus on interstate trafficking and poaching cases on federal lands, and seek to ensure that wildlife conservation laws are applied uniformly and enforced across the country, seeking consistency in these criminal prosecutions and a vigorous enforcement program that serves as an international role model.

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

Civil Litigating Activities

A. Performance Plan and Report for Outcomes

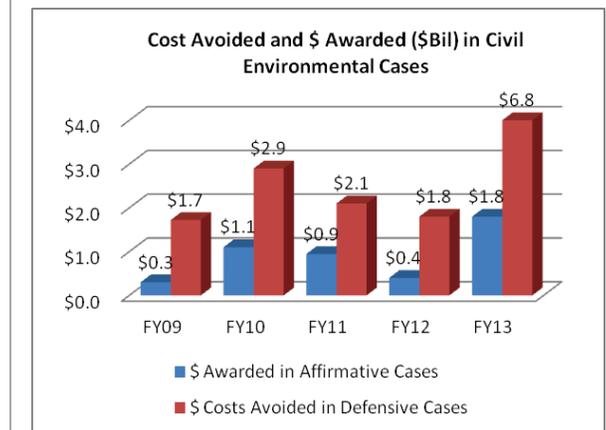
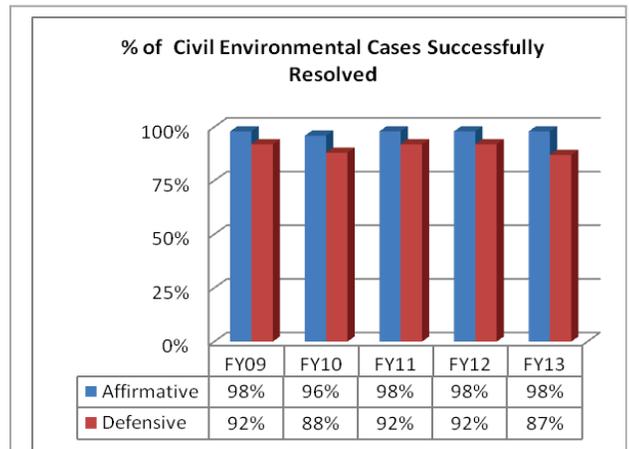
The Department enforces environmental laws to protect the health and environment of the United States and its citizens, defends environmental challenges to government programs and activities, and represents the United States in all matters concerning the protection, use, and development of the nation’s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

Performance Results

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

- ❖ **FY 2013 Target:**
85% Affirmative; 75% Defensive
- ❖ **FY 2013 Actual**
98% Affirmative; 87% Defensive

Discussion: In FY 2013, ENRD ensured that harmful sediments are removed from rivers, state-of-the-art pollution control devices are added to factories to provide cleaner air, sewage discharges are eliminated, and damaged land and water aquifers are restored. ENRD also worked successfully to ensure the integrity of municipal wastewater treatment systems. Each year, hundreds of billions of gallons of untreated sewage are discharged into the nation’s waters from municipal wastewater treatment systems that are overwhelmed by weather conditions they are not designed to handle.



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

In one such case, ENRD, EPA, and the State of Pennsylvania reached an agreement with the Scranton Sewer Authority (SSA) resolving alleged Clean Water Act violations involving sewer overflows to the Lackawanna River and its tributaries. In December 2012, SSA agreed to implement a 25-year plan to control and significantly reduce overflows of its sewer system, thereby helping improve water quality of the Lackawanna River and local streams. The plan is estimated to cost \$140 million to implement. The settlement also requires SSA to pay a \$340,000 civil penalty, which will be split evenly between the United States and Pennsylvania. The settlement addresses problems with SSA's combined sewer system, which when overwhelmed by stormwater, frequently discharges raw sewage, industrial waste, nitrogen, phosphorus and polluted stormwater into the Lackawanna River and its tributaries, part of the Chesapeake Bay Watershed. The volume of combined sewage that overflows from the system is approximately 700 million gallons annually. The agreement requires the installation of a state-of-the-art biological treatment system to reduce discharges of nitrogen and phosphorus pollution.

FY 2013 Performance Plan Evaluation: We exceeded our affirmative and defensive civil litigation goals – affirmative by 13 percent, and defensive by 12 percent. The Division continues its strong record of success in civil environmental enforcement of federal pollution abatement laws, and compliance with environmental protection and conservation statutes. ENRD obtains redress for past violations harming the environment and 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.

FY 2014/2015 Performance Plan: Considering our past performance, we aim to achieve litigation success rates of 85 percent Affirmative and 75 percent Defensive (average of 80 percent) for FY 2014 and FY 2014. 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. Several years of data demonstrate that our targets are set at achievable levels and do not deter high performance.

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

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

- ❖ ***FY 2013 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.***
- ❖ ***FY 2013 Actual: \$6.8 billion avoided; \$1.8 billion awarded***

Discussion: The Division had several important civil litigation successes in FY 2013 in cases seeking civil penalties and other monetary recoveries. We continued to successfully litigate

Clean Air Act (CAA) claims against operators of coal-fired electric power generating plants and cement manufacturers. These types of violations, litigated by 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 April 2013, the Division and EPA reached an agreement with CEMEX, Inc., the owner and operator of a Portland cement manufacturing facility in Lyons, Colo., for the company to operate advanced pollution controls on its kiln and pay a \$1 million civil penalty to resolve alleged violations of the Clean Air Act (CAA). Between 1997 and 2000, CEMEX is alleged to have unlawfully made modifications at its Lyons plant that resulted in significant net increases of nitrogen oxide (NOx) and particulate matter (PM) emissions. As part of the settlement, CEMEX will install advanced pollution control technology designed to reduce NOx emissions at their Lyons facility. This will reduce their NOx emissions by approximately 870 to 1,200 tons per year. The initial capital cost is approximately \$600,000, and the annual cost of the process is anticipated to be about \$1.5 million per year. The settlement is part of EPA's national enforcement initiative to control harmful air pollution from the largest sources of emissions, including Portland cement manufacturing facilities. NOx emissions may cause severe respiratory problems and contribute to childhood asthma. These emissions also contribute to acid rain, smog, and haze which impair visibility in national parks. CEMEX's facility is located within 20 miles of Rocky Mountain National Park, and its emissions may contribute to visibility impairment and to the nitrogen pollution problem that is affecting the park's vegetation, water quality, and trout populations. Air pollution from Portland cement manufacturing facilities can also travel significant distances downwind, crossing state lines and creating region-wide health problems.

FY 2014/2015 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance are not projected for this indicator. There are many factors that affect our overall performance, including proposed legislation and judicial calendars. The overall performance of the Division can be affected when large cases are decided, so we do not project annually, but our goal is to improve overall performance in a 5-year span.



A wide variety of animal species have managed to find a niche on Assateague Island. Each of the island's different ecological zones provides habitat for a multitude of animals, including birds, mammals, reptiles, amphibians, and invertebrates. Two species of deer take advantage of the island's interior forests and shrub habitats, the native white-tailed deer and the non-native sika deer actually a diminutive species of oriental elk. Ongoing research is evaluating the ecological effects of sika deer on both native vegetation communities and other wildlife such as the white-tailed deer

III. Efficiency Measures

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

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

❖ *FY 2013 Target: \$81 awarded; \$22 saved*

❖ *FY 2013 Actual: \$111 awarded; \$107 saved*

Discussion: The Division had a commendable FY 2013 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 \$6.5 billion in settlements and court ordered injunctive relief. Additionally, the Division saved the government more than \$6.8 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.

FY 2014/2015 Performance Plan: The Division has an exemplary record in protecting the environment, Indian rights, and the nation's natural resources, wildlife, and public lands, and will continue to establish ambitious targets through FY 2015. 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 resources laws, thereby improving the environment, the quality of our natural resources, and the safety and health of U.S. citizens.

B. Strategies to Accomplish Outcomes

As our environment changes, so do the actions we take to preserve the health and life of those residing within the borders of the United States. Environmental groups and other interested parties challenge Administration policies every year. ENRD is responsible for defending federal agencies carrying out Administration policies every day. The Division has realized some remarkable successes to date. In an effort to continue our successful record of litigation, the Division has sought new and creative ways to utilize our limited resources. For example, ENRD has adopted a policy of "porosity," whereby cases involving the responsibilities of different sections within ENRD can be litigated by a single attorney, rather than two or three attorneys

from different sections. As such, ENRD's porosity policy allows us to litigate case in a manner that conserves resources, without regard to bureaucratic distinctions within the Division. This policy has also resulted in more flexibility to shift workloads between attorneys when they become overburdened. Although cross-training staff grows our workforce's skills and abilities, it does not address long-term caseload issues.

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



Water temperature in the surrounding ocean fluctuates throughout the year. In winter temperatures dip to near 40 °F, while during a warm summer the water can reach into the middle to upper 70's. As the temperature and weather conditions change, so do the animals inhabiting the offshore waters. Many species of fish, birds, marine mammals, and sea turtles migrate up and down the coast, following the most favorable conditions.

VI. Program Offsets by Item

Item Name: Miscellaneous Program and Administrative Reductions

Strategic Goal: Goal 2. Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law
Goal 3. Ensure and Support the Fair, Impartial, Efficient, and Transparent Administration of Justice at the Federal, State, Local, Tribal and International Levels.

Strategic Objective: Objective 2.6 Protect the federal fisc and defend the interests of the United States
Objective 3.8 Strengthen the government-to-government relationship between tribes and the United States, improve public safety in Indian Country, and honor treaty and trust responsibilities through consistent, coordinated policies, activities, and litigation

Budget Decision Unit: Environment and Natural Resources Division
Organizational Program: Land, Natural Resources, and Indian Matters

Program Offset: Positions ___ Agt/Atty _____ FTE ___ Dollars -\$6,478,000

Description of Item

Program and administrative reductions to be identified once funds are appropriated.

Justification

Reductions to existing operations and services necessary to pay for increases in existing costs, including pay raises, FERS contributions, and GSA rent, among others.

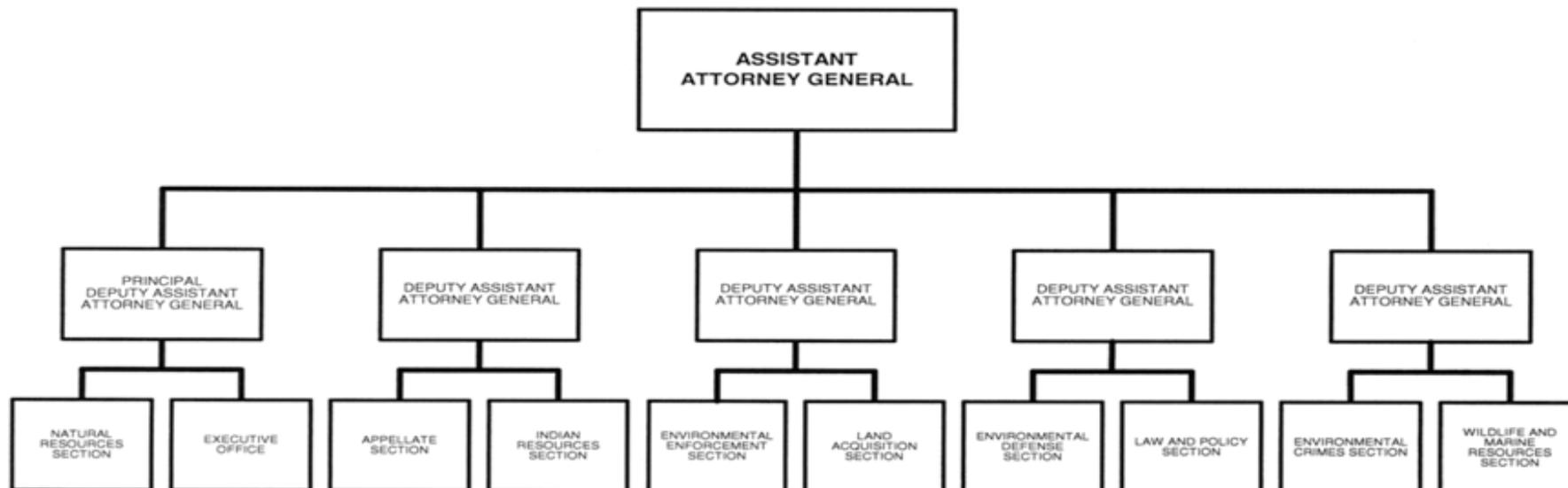
Impact on Performance

Performance impact information is not yet available for this offset.

VII. Exhibits

A: Organizational Chart

ENVIRONMENT AND NATURAL RESOURCES DIVISION



Approved by:

ERIC H. HOLDER, JR.
Attorney General

Date: April 26, 2010

B. Summary of Requirements

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

	FY 2015 Request		
	Direct Positions	FTE	Amount
2013 Enacted	537	526	109,504
2013 Rescissions (1.877% & 0.2%)			-2,270
2013 Sequester			-5,398
Total 2013 Enacted (with Rescissions and Sequester)	537	526	101,836
2014 Enacted	537	526	107,643
Base Adjustments			
Pay and Benefits	0	0	1,853
Domestic Rent and Facilities	0	0	9,469
Total Base Adjustments	0	0	11,322
2015 Current Services	537	526	118,965
Program Changes			
Offsets:			
Program Offset - Miscellaneous Program and Administrative Reductions	0	0	-6,478
Subtotal, Program Changes	0	0	-6,478
2015 Total Request	537	526	112,487
2014 - 2015 Total Change	0	0	4,844

Note: The FTE for FY 2013 is actual and for FY 2014 and FY 2015 is estimated.

B. Summary of Requirements

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

Program Activity	2013 Enacted with Rescissions and Sequester			2014 Enacted			2015 Technical and Base Adjustments			2015 Current Services		
	Direct Pos.	Actual FTE	Amount	Direct Pos.	Est. FTE	Amount	Direct Pos.	Est. FTE	Amount	Direct Pos.	Est. FTE	Amount
Environment and Natural Resources	537	526	101,836	537	526	107,643	0	0	11,322	537	526	118,965
Total Direct	537	526	101,836	537	526	107,643	0	0	11,322	537	526	118,965
Balance Rescission			0			0			0			0
Total Direct with Rescission			101,836			107,643			11,322			118,965
Reimbursable FTE		100			115			0			115	
Total Direct and Reimb. FTE		626			641			0			641	
Other FTE:												
LEAP		0			0			0			0	
Overtime		0			0			0			0	
Grand Total, FTE		626			641			0			641	

Program Activity	2015 Increases			2015 Offsets			2015 Request		
	Direct Pos.	Est. FTE	Amount	Direct Pos.	Est. FTE	Amount	Direct Pos.	Est. FTE	Amount
Environment and Natural Resources	0	0	0	0	0	-6,478	537	526	112,487
Total Direct	0	0	0	0	0	-6,478	537	526	112,487
Balance Rescission			0			0			0
Total Direct with Rescission			0			-6,478			112,487
Reimbursable FTE		0			0			115	
Total Direct and Reimb. FTE		0			0			641	
Other FTE:								0	
LEAP		0			0			0	
Overtime		0			0			0	
Grand Total, FTE		0			0			641	

C. Program Changes by Decision Unit

FY 2015 Program Changes by Decision Unit

Environment and Natural Resources Division

Salaries and Expenses

(Dollars in Thousands)

Program Offsets	Location of Description in Narrative	Environment and Natural Resources				Total Offsets			
		Direct Pos.	Agt./ Atty.	Est. FTE	Amount	Direct Pos.	Agt./ Atty.	Est. FTE	Amount
Miscellaneous Program and Administrative Reductions		0	0	0	-6,478	0	0	0	-6,478
Total Program Offsets		0	0	0	-6,478	0	0	0	-6,478

D. Resources by DOJ Strategic Goal and Strategic Objective

Resources by Department of Justice Strategic Goal/Objective
 Environment and Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

Strategic Goal and Strategic Objective	2013 Enacted with Rescissions and Sequester		2014 Enacted		2015 Current Services		2015 Increases		2015 Offsets		2015 Total Request	
	Direct/ Reimb FTE	Direct Amount	Direct/ Reimb FTE	Direct Amount	Direct/ Reimb FTE	Direct Amount	Direct/ Reimb FTE	Direct Amount	Direct/ Reimb FTE	Direct Amount	Direct/ Reimb FTE	Direct Amount
Goal 2 Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law												
2.6 Protect the federal fisc and defend the interests of the United States	583	91,417	601	97,230	601	107,457	0	0	0	-5,851	601	101,606
Subtotal, Goal 2	583	91,417	601	97,230	601	107,457	0	0	0	-5,851	601	101,606
Goal 3 Ensure and Support the Fair, Impartial, Efficient, and Transparent Administration of Justice at the Federal, State, Local, Tribal and International Levels.												
3.8 Strengthen the government-to-government relationship between tribes and the United States, improve public safety in Indian Country, and honor treaty and trust responsibilities through consistent, coordinated policies, activities, and litigation	43	10,419	40	10,413	40	11,508			0	-627	40	10,881
Subtotal, Goal 3	43	10,419	40	10,413	40	11,508	0	0	0	-627	40	10,881
TOTAL	626	101,836	641	107,643	641	118,965	0	0	0	-6,478	641	112,487

Note: Excludes Balance Rescission and/or Supplemental Appropriations.

E. Justification for Technical and Base Adjustments

Justifications for Technical and Base Adjustments

Environment and Natural Resources Division

Salaries and Expenses

(Dollars in Thousands)

	Direct Pos.	Estimate FTE	Amount
Pay and Benefits			
1 <u>2015 Pay Raise:</u> This request provides for a proposed 1 percent pay raise to be effective in January of 2015. The amount requested, \$513,000, represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits (\$403,000 for pay and \$110,000 for benefits.)			513
2 <u>Annualization of 2014 Pay Raise:</u> This pay annualization represents first quarter amounts (October through December) of the 2014 pay increase of 1.0% included in the 2014 President's Budget. The amount requested \$193,000, represents the pay amounts for 1/4 of the fiscal year plus appropriate benefits (\$151,000 for pay and \$42,000 for benefits).			193
<u>FERS Retirement Contribution:</u> Effective October 1, 2014 (FY 2015), the new agency contribution rates are 13.2% (up from the current 11.9%, or an increase of 1.3%.) The amount requested, \$898,000, represents the funds needed to cover this increase.			898
5 <u>Employee Compensation Fund:</u> The \$2,000 request reflects anticipated changes in payments to the Department of Labor for injury benefits under the Federal Employee Compensation Act.			2
6 <u>Health Insurance:</u> Effective January 2015, the component's contribution to Federal employees' health insurance increases by 3 percent. Applied against the 2014 estimate, the additional amount required is \$96,000.			96
7 <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 \$151,000 is necessary to meet our increased retirement obligations as a result of this conversion.			151
Subtotal, Pay and Benefits	0	0	1,853
Domestic Rent and Facilities			
1 <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 \$630,000 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 FY 2015 for each building currently occupied by Department of Justice components, as well as the costs of new space to be occupied. GSA provides data on the rate increases.			630
2 <u>Guard Services:</u> This includes Department of Homeland Security (DHS) Federal Protective Service charges, Justice Protective Service charges and other security services across the country. The requested increase of \$11,000 is required to meet these commitments.			11
3 <u>Moves (Lease Expirations):</u> GSA requires all agencies to pay relocation costs associated with lease expirations. This request provides for the costs associated with new office relocations caused by the expiration of leases in FY 2015.			8,828
Subtotal, Domestic Rent and Facilities	0	0	9,469
TOTAL DIRECT TECHNICAL and BASE ADJUSTMENTS	0	0	11,322

F. Crosswalk of 2013 Availability

Crosswalk of 2013 Availability
 Environment and Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

Program Activity	2013 Appropriation Enacted w/o Balance Rescission ¹			Supplementals			Sequester			Reallocations			Carryover	Recoveries/ Refunds	2013 Actual		
	Direct Pos.	Actual FTE	Amount	Direct Pos.	Actual FTE	Amount	Direct Pos.	Actual FTE	Amount	Direct Pos.	Actual FTE	Amount	Amount	Amount	Direct Pos.	Actual FTE	Amount
Land, natural resources and Indian matters	537	526	107,234	0	0	0	0	0	-5,398	0	0	5,400	2,004	0	537	526	109,240
Total Direct	537	526	107,234	0	0	0	0	0	-5,398	0	0	5,400	2,004	0	537	526	109,240
Reimbursable FTE		100			0			0			0					100	
Total Direct and Reimb. FTE		626			0			0			0					626	
Other FTE:																	
LEAP		0			0			0			0					0	
Overtime		0			0			0			0					0	
Grand Total, FTE		626			0			0			0					626	

Footnotes:

1) The 2013 Enacted appropriation includes the 2 across-the-board rescissions of 1.877% and 0.2%

Reprogramming/Transfers

Funding of \$5,400,000 was distributed from GLA's ALS account to ENRD.

Carryover:

Funds were carried over into 2013 from GLA's 2012 no-year account (\$2,004k)

G. Crosswalk of 2014 Availability

Crosswalk of 2014 Availability
 Environment and Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

Program Activity	FY 2014 Enacted			Reprogramming/Transfers			Carryover	Recoveries/ Refunds	2014 Availability		
	Direct Pos.	Estim. FTE	Amount	Direct Pos.	Estim. FTE	Amount	Amount	Amount	Direct Pos.	Estim. FTE	Amount
Land, natural resources and Indian matters	537	526	107,643	0	0		2,004	0	537	526	109,647
Total Direct	537	526	107,643	0	0	0	2,004	0	537	526	109,647
Balance Rescission			0								0
Total Direct with Rescission			107,643				2,004				109,647
Reimbursable FTE		115			0					115	
Total Direct and Reimb. FTE		641			0					641	
Other FTE:											
LEAP		0			0					0	
Overtime		0			0					0	
Grand Total, FTE		641			0					641	

Carryover:

Funds were carried over from into FY 2014 from
 GLA's 2013 no-year account

H. Summary of Reimbursable Resources

Summary of Reimbursable Resources

Environment and Natural Resources Division
Salaries and Expenses
(Dollars in Thousands)

Collections by Source	2013 Actual			2014 Planned			2015 Request			Increase/Decrease		
	Reimb. Pos.	Reimb. FTE	Amount	Reimb. Pos.	Reimb. FTE	Amount	Reimb. Pos.	Reimb. FTE	Amount	Reimb. Pos.	Reimb. FTE	Amount
Department of Agriculture			21			118			118			0
Department of Commerce			0			14			14			0
Department of Defense			673			1,873			1,873			0
Department of Energy			160			315			315			0
Department of Health and Human Services			2,841			3,100			3,100			0
Department of Homeland Security			196			600			600			0
Department of the Interior			2,106			6,200			5,730			-470
Department of Justice			21,029			29,530			28,000			-1,530
Department of State			8			500			500			0
Department of the Treasury			100			10			10			0
Environmental Protection Agency		100	23,855		115	25,970		115	25,970	0	0	0
Federal Trade Commission			1,455			1,200			1,200			0
Securities and Exchange Commission			14,360			17,070			17,070			0
Others			1,028			500			500			0
Budgetary Resources	0	100	67,832	0	115	87,000	0	115	85,000	0	0	-2,000

Obligations by Program Activity	2013 Actual			2014 Planned			2015 Request			Increase/Decrease		
	Reimb. Pos.	Reimb. FTE	Amount	Reimb. Pos.	Reimb. FTE	Amount	Reimb. Pos.	Reimb. FTE	Amount	Reimb. Pos.	Reimb. FTE	Amount
Environment and Natural Resources	100	100	67,832	115	115	87,000	115	115	85,000	0	0	-2,000
Budgetary Resources	100	100	67,832	115	115	87,000	115	115	85,000	0	0	-2,000

I. Detail of Permanent Positions by Category

Detail of Permanent Positions by Category
 Environment and Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

Category	2013 Enacted with Rescissions & Sequestration		2014 Enacted		2015 Request				
	Direct Pos.	Reimb. Pos.	Direct Pos.	Reimb. Pos.	ATBs	Program Increases	Program Offsets	Total Direct Pos.	Total Reimb. Pos.
Security Specialists (080)	1	0	1	0	0	0	0	1	0
Personnel Management (200-299)	5	2	5	2	0	0	0	5	2
Clerical and Office Services (300-399)	52	20	52	20	0	0	0	52	20
Accounting and Budget (500-599)	4	1	4	1	0	0	0	4	1
Attorneys (905)	370	69	370	69	0	0	0	370	69
Paralegals / Other Law (900-998)	88	19	88	19	0	0	0	88	19
Business & Industry (1100-1199)	3	1	3	1	0	0	0	3	1
Information Technology Mgmt (2210)	14	3	14	3	0	0	0	14	3
Total	537	115	537	115	0	0	0	537	115
Headquarters (Washington, D.C.)	460	99	460	99	0	0	0	460	99
U.S. Field	77	16	77	16	0	0	0	77	16
Total	537	115	537	115	0	0	0	537	115

Footnotes:

J. Financial Analysis of Program Changes

Financial Analysis of Program Changes

Environment and Natural Resources Division

Salaries and Expenses

(Dollars in Thousands)

Grades	Environment and Natural Resources		Total Program Changes	
	Program Offsets		Direct Pos.	Amount
	Direct Pos.	Amount		
SES	0	0	0	0
GS-15	0	0	0	0
GS-14	0	0	0	0
GS-13	0	0	0	0
GS-12	0	0	0	0
GS-11	0	0	0	0
GS-10	0	0	0	0
GS-9	0	0	0	0
GS-8	0	0	0	0
GS-7	0	0	0	0
GS-6	0	0	0	0
GS-5	0	0	0	0
Total Positions and Annual Amount	0	0	0	0
Lapse (-)	0	0	0	0
11.5 Other Personnel Compensation	0	0	0	0
Total FTEs and Personnel Compensation	0	0	0	0
13.0 Benefits for former personnel		0		0
21.0 Travel and Transportation of Persons		0		0
22.0 Transportation of Things		0		0
23.1 Rental Payments to GSA		0		0
23.3 Communications, Utilities, and Miscellaneous Charges		0		0
24.0 Printing and Reproduction		0		0
25.1 Advisory and Assistance Services		0		0
25.2 Other Services from Non-Federal Sources		0		0
25.3 Other Goods and Services from Federal Sources		0		-6,478
25.5 Research and Development Contracts		0		0
25.7 Operation and Maintenance of Equipment		0		0
26.0 Supplies and Materials		0		0
31.0 Equipment		0		0
Total Program Change Requests	0	0	0	-6,478

K. Summary of Requirements by Object Class

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

Object Class	2013 Actual		2014 Availability		2015 Request		Increase/Decrease	
	Direct FTE	Amount	Direct FTE	Amount	Direct FTE	Amount	Direct FTE	Amount
11.1 Full-Time Permanent	492	49,670	492	53,535	492	54,241	0	706
11.3 Other than Full-Time Permanent	34	4,115	34	4,058	34	4,058	0	0
11.5 Other Personnel Compensation	0	227	0	744	0	744	0	0
<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	137	0	281	0	281	0	0
Total	526	54,149	526	58,617	526	59,323	0	706
Other Object Classes								
12.0 Personnel Benefits		18,292		20,545		21,692		1,147
13.0 Benefits for former personnel		5		0		0		0
21.0 Travel and Transportation of Persons		2,037		2,268		2,268		0
22.0 Transportation of Things		282		316		316		0
23.1 Rental Payments to GSA		12,055		11,768		12,398		630
23.3 Communications, Utilities, and Miscellaneous Charges		1,086		1,220		1,220		0
24.0 Printing and Reproduction		82		92		92		0
25.1 Advisory and Assistance Services		470		527		527		0
25.2 Other Services from Non-Federal Sources		9,421		8,087		8,087		0
25.3 Other Goods and Services from Federal Sources		7,538		4,406		4,763		357
26.0 Supplies and Materials		313		352		352		0
31.0 Equipment		1,209		1,352		1,352		0
42.0 Insurance Claims and Indemnities		84		97		97		0
Total Obligations		107,023		109,647		112,487		2,840
Subtract - Unobligated Balance, Start-of-Year		-2,004		-2,004		0		2,004
Subtract - Transfers/Reprogramming		0		0		0		0
Subtract - Reallocations		-5,400		0		0		0
Add - Unobligated End-of-Year, Available		2,004		0		0		0
Add - Unobligated End-of-Year, Expiring		213		0		0		0
Total Direct Requirements	0	101,836	0	107,643	0	112,487	0	4,844
Reimbursable FTE								
Full-Time Permanent	100		115		115		0	
23.1 Rental Payments to GSA (Reimbursable)		2,326		2,354		2,455		
25.3 Other Goods and Services from Federal Sources - DHS Security (Reimbursable)		35		35		37		