

U.S. Department of Justice



ENRD

ENRD

FY 2021

PERFORMANCE BUDGET
CONGRESSIONAL BUDGET JUSTIFICATION

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I. Overview of the Environment and Natural Resources Division

In the coming years, many key initiatives in President Trump's environmental and energy deregulatory agenda will be litigated in federal courts across the country. These administrative cases, with regulatory impacts estimated in the billions of dollars to the national economy, will be defended by the Department of Justice (DOJ or Department) Environment and Natural Resources Division (ENRD or “the Division”). So, too, will the federal effort to acquire real property by condemnation for the construction of a U.S.-Mexico Border Wall across hundreds of miles of property. ENRD has continued to record more than \$858.6 million per year in civil and criminal fines, penalties, and costs recovered, as well as several billion dollars per year in pollution controls and environmental cleanups. Yet all of its litigation occurs in a specialized area of laws that cannot be diverted to and handled by United States Attorneys’ offices.

A program enhancement of \$796,000 would bring ENRD’s total general fund appropriation to \$114,254,000 President Trump has stated, “We have the cleanest air in the world, in the United States ... I want crystal-clean water and air.” Consistent with that, this enhancement will enable the Department and Administration to announce an increase of environmental enforcement capacity by 10%—the largest in decades, which comes at a critical time. The requested amount will ensure that ENRD is able to defend the President’s priorities, and continue to secure significant victories for the Department, its client agencies, and the American people.

Electronic copies of the Department of Justice’s Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <https://www.justice.gov/CJ>.

A. Introduction:

Environment and Natural Resources Division Mission: The Environment and Natural Resources Division was established in 1909 to handle all cases concerning “enforcement of the Public Land Law” and relating to Indian affairs. As the nation grew and developed, so did the responsibilities of the Division. Its name changed to the “Environment and Natural Resources Division” to better reflect those responsibilities. Over 100 years after our founding, ENRD is as mindful as ever of the strong legacy that we inherited and the opportunities and challenges that lie ahead of us. The Division has a main office in Washington, D.C., and field offices across the United States. It has a staff of approximately 483 Full-Time Equivalent (FTE) employees, organized into ten sections. The Division represents virtually every federal agency in cases arising in all 50 states and the United States territories.

Our litigation responsibilities at present are broad and include:

- Enforcing the nation’s civil and criminal pollution-control laws,
- Defending environmental challenges to federal agency programs and activities, including the current administration’s multi-billion dollar deregulatory rulemaking efforts,
- Representing the United States in matters concerning the stewardship of the nation’s natural resources and public lands,
- Acquiring real property, including for the U.S.-Mexico Border wall,
- Bringing and defending cases under the wildlife protection statutes, and
- Litigating cases concerning the resources and rights of Indian tribes and their members.

To effectively carry out its important mission in FY 2021, ENRD is requesting a total of \$114,254,000, including 548 positions (378 attorneys), and 487 FTEs. The request includes a program

enhancement of \$796,000, including 7 positions (5 attorneys) and 4 FTEs to support the burgeoning defensive and affirmative work of the Division. ENRD also has 41 reimbursable FTEs.

B. Issues, Outcomes, and Strategies:

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 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 those who commit environmental crimes, ENRD spurs greater compliance with the law. 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 defense of agency decisions approving infrastructure development projects and permitting energy resource extraction, litigation over water quality and watersheds, the management of public lands and natural resources, endangered species and critical habitat, and land acquisition and exchanges. The Division is increasingly called upon to defend the Department of Defense's training and operations necessary for military readiness and national defense.

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 protection laws. It also defends federal agency actions and Administration policies 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.

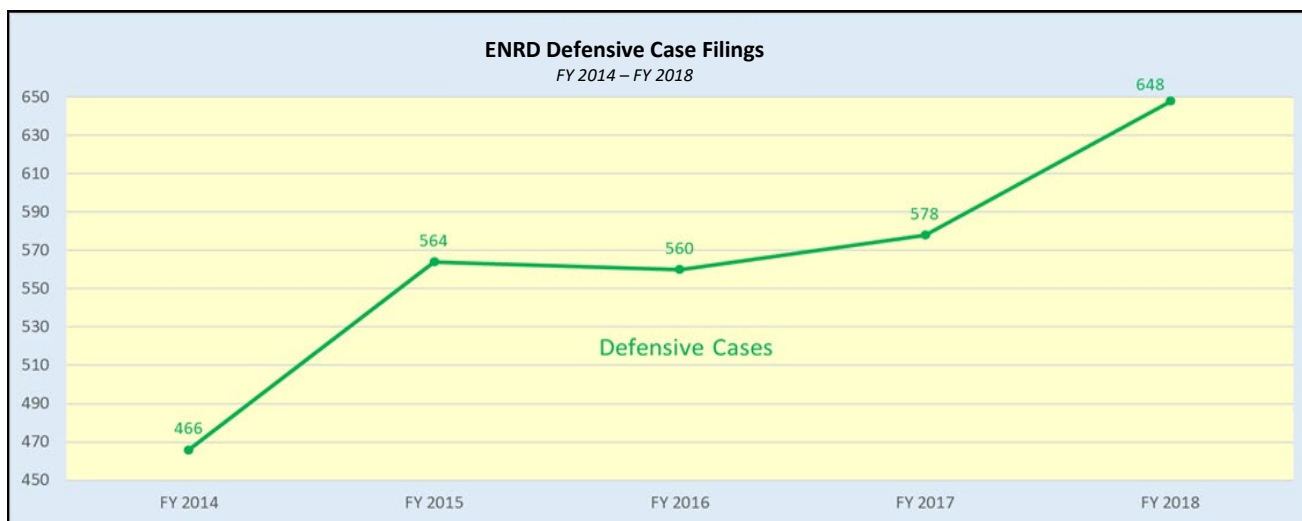
Over the past few years, ENRD has taken steps to reduce costs and limit resource expenditures. We take our role as responsible custodians of the public fisc very seriously; and we are proud of the short and long-term cost saving measures and efficiencies we have implemented in recent years.

C. Current and Anticipated Workload Challenges:

ENRD will continue to enforce our Nation’s environmental laws, support Administration priorities, and defend a wide array of federal agency actions. The Division plays a critical role in ensuring that the environmental laws passed by Congress are faithfully executed. ENRD’s enforcement of laws such as the Clean Air Act (CAA), Clean Water Act (CWA), and Endangered Species Act (ESA) secures environmental compliance and restoration, deterrence of future violations, and the protection of American taxpayers in the form of criminal and civil fines and penalties, which are returned to the federal treasury. In addition, ENRD litigation plays a significant role in helping to achieve the policy objectives of our nation’s Legislative and Executive Branch officials.

External Challenges

Environmental protection statutes and administrative law principles allow states, non-governmental organizations, and individuals to bring judicial challenges to federal agency action. This includes deregulatory actions taken by federal agencies to modify or repeal prior Administration rules or programs. When such lawsuits are filed, ENRD’s mission is to defend its client agencies. Defensive cases make up approximately half of our workload, with court schedules and deadlines driving the pace of work and attorney time in this type of litigation. ENRD’s defensive caseload has increased dramatically in recent years and is expected to continue to increase in FY 2020 and FY 2021. This defensive work is a specialized litigation docket that cannot effectively or efficiently be referred to the United States Attorneys’ offices.



Below is a summary of some of the current and expected defensive challenges that will impact the Division through FY 2021, which in the aggregate are likely to require significant ENRD resources:

- The Division serves as the nation’s lead legal advisor for all agencies working on acquiring land to build the U.S.-Mexico Border Wall and related infrastructure. ENRD provides legal advice and guidance on how best to proceed with condemnation, land acquisition, title and valuation matters to allow for the construction of the Border Wall to ensure the safety of our citizens and the protection of our borders. ENRD’s work on this matter is in response to the President’s January 25, 2017 Executive Order that directs the Department of Homeland Security (DHS) to plan, design and construct a Border Wall along the border between the United States and Mexico. To

that end, the United States is planning and building extensive Border Wall infrastructure that will add more than 400 miles along the border to address imminent security threats.

- The Division is responsible for defending a number of **Energy Infrastructure Development and Energy Security** cases. The Division will continue to defend agency decisions allowing the development of energy infrastructure projects, including Presidential permits issued for the construction of transcontinental pipelines and other infrastructure. In addition, ENRD defends agency actions permitting energy extraction activities.
- The Division is currently defending hundreds of cases alleging a taking without just compensation in violation of the Fifth Amendment stemming from the Army Corps of Engineers' management of two flood-control reservoirs near Houston during and immediately after **Hurricane Harvey**. The cases have been split into "upstream" and "downstream" dockets and the claims of test plaintiffs are moving forward in each docket. After these cases are tried in FY 2020, the Division expects claims involving thousands of additional plaintiffs to move forward in FY 2021 and beyond.
- The Division currently represents the United States or the Departments of the Interior and of the Treasury in more than a dozen pending **Tribal Trust** cases in various federal district courts and the United States Court of Federal Claims, in which tribes or Indian plaintiffs demand "full and complete" historical trust accountings and damages for financial injury resulting from the government's alleged mismanagement of the plaintiffs' trust funds and non-monetary assets. The plaintiffs' damage claims total billions of dollars in the currently pending cases. Throughout FY 2020 and 2021, the present cases will require substantial resources in order to conduct or complete extensive fact and expert discovery related to claims for alleged mismanagement of not only numerous tribal trust or individual Indian money accounts, but also extensive non-monetary tribal trust resources between 1946 and the present.
- The Division also handles several types of litigation over **water allocation**, including **water rights litigation** on behalf of every federal agency with water-dependent facilities, programs, or land management responsibilities. In the coming years, ENRD anticipates increasing demands on resources from a growing load of water rights cases. In particular, we expect growth in the litigation of voluminous proceedings known as "general stream adjudications," in which courts – mostly state courts in the western United States – adjudicate the rights of all the water users in a river basin. The staff dedicated to general stream adjudications across the West is generally smaller than the staff employed by each of the western states alone; and these cases – which often involve thousands of parties, tens of thousands of claims and objections, and take decades for discovery, pretrial litigation and trial – already place significant demands on our personnel resources.

The Division is also deeply engaged in a number of continuing and prospective **affirmative cases and matters**, including several "defeat device" and related mobile source Clean Air Act cases, such as the ones ENRD recently concluded against Volkswagen and Fiat-Chrysler. We are also engaged in Clean Water Act cases against a variety of corporate defendants as well as municipalities. Many of these cases are discussed in the Accomplishments section on page 12.

Internal Challenges

Additionally, With the introduction of new technologies and new requirements in the legal industry – such as e-filing, on-line document repositories, web-based privilege reviews, electronic trials, extranet docketing systems, and electronic discovery – we are in constant need of ensuring our workforce has the expertise and access to software, hardware, and systems to keep pace. ENRD continues to refresh aging hardware, develop and implement required tracking systems, and comply with Federal IT security mandates.

D. Achieving Cost Savings and Efficiencies

The Division has demonstrated a commitment to achieving cost savings and has attained measurable results over the past several years.

Starting in 2011, ENRD responded to anticipated budgetary challenges by convening a committee of Division attorneys, paralegals, legal assistants, and managers from across all ten litigating sections (the \$AVE Committee). Through multiple iterations of ENRD's \$AVE Committee, the Division has cut hundreds of thousands of dollars from its operating budget.

In 2017, the Attorney General directed components to conduct their own internal reviews to identify opportunities to make the best use of the Justice Department's resources in alignment with Department priorities. The Attorney General's directive followed a directive from the President to review agency operations to identify activities that could be improved, realigned, or eliminated to save taxpayer money, gain efficiencies, and better serve the American people. At ENRD, we took the instruction seriously, beginning with our submittal and implementation of a comprehensive reorganization plan in June 2017. As a leader in employing technological solutions, ENRD continues to implement cost-effective alternatives such as video conferencing and web-based applications for meetings (which duly reduce travel costs). We continue to push the use of on-line travel reservations, as opposed to using agent assisted booking services, leading to additional cost savings. ENRD has reduced its fax machine inventory by over 90%, and will address whether more fax machines can be decommissioned, saving line costs as well as machine maintenance and supply cost. The \$AVE Committee has also encouraged participation in ENRD's Gainsharing program which saves the Division from paying certain discretionary travel related expenses.

At the same time, our Division is experiencing an increased workload compared to recent years. The President has issued a series of Executive Orders and presidential actions on topics ranging from border security and transportation infrastructure to energy development, environmental policy, and regulatory reform, all of which have led to increased resource demands on ENRD to aid federal agencies in implementing these directives and to defend those agency actions taken in furtherance of the President's directives when they are challenged in federal court. ENRD's average caseload over the past three years (2016-2018) was approximately 300 cases and matters larger than it was over the previous three years (2013-2015). To address surging work in some areas, our Division has taken a number of interim measures to realign resources and attorneys, including detailing lawyers from areas of more discretionary work to areas demanding an immediate and critical infusion of additional labor and resources.

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, database creation and web hosting. In FY 2019,

the Division recognized savings of approximately \$11.9 million, compared to what the in-house services provided would have cost if outsourced to a contractor/vendor.

II. Summary of Program Changes

As described in greater detail in Section V. of this document, ENRD is requesting \$796,000, including 7 positions (5 attorneys) and 4 FTEs, to support a *Common-Sense and Effective Approach to Environmental Litigation*.

Through this initiative, the Environment and Natural Resources Division seeks to support the Division’s defense of this Administration’s pollution control and natural resource regulatory reform agenda. This enhancement request will allow the Division to hire additional attorneys and staff to address these workload demands, and allow the best possible defense of the Administration’s priority actions.

ENRD is also seeking additional resources to (1) vindicate the rule of law principles that protect the health and safety of the American people; (2) advance the Division’s enforcement of the Nations’ environmental laws; and (3) protect the public fisc. The proposed increase will foster timelier, more effective enforcement of the law.

| Initiative | Description | | | | Page |
|---|---|------|-----|-----------------|------|
| | | Pos. | FTE | Dollars (\$000) | |
| Common-Sense and Effective Approach to Environmental Litigation | Defending the Administration’s Environmental Rulemaking and Natural Resources Reform Agenda and Enforcing the Nation’s Pollution Control Laws | 7 | 4 | \$796 | 26 |

III. Appropriations Language and Analysis of Appropriations Language

ENRD is one of nine offices or divisions grouped under the General Legal Activities (GLA) appropriation of the Department of Justice. Below is the language from the 2020 Commerce, Justice, Science and Related Agencies Appropriations Bill for the GLA components:

For expenses necessary for the legal activities of the Department of Justice, not otherwise provided for, including not to exceed \$20,000 for expenses of collecting evidence, to be expended under the direction of, and to be accounted for solely under the certificate of, the Attorney General; the administration of pardon and clemency petitions; and rent of private or Government-owned space in the District of Columbia, \$920,000,000, of which not to exceed \$20,000,000 for litigation support contracts shall remain available until expended...

ENRD recommends no substantive changes to the Appropriation language in the 2021 Budget.

IV. Decision Unit Justification

| Environment and Natural Resources Division | Direct Pos. | Estimate FTE | Amount |
|---|--------------------|-------------------------|----------------|
| 2019 Enacted | 537 | 479 | \$109,423 |
| 2020 Enacted | 541 | 481 | \$109,423 |
| Adjustments to Base and Technical Adjustments | 0 | 2 | \$4,035 |
| 2021 Current Services | 541 | 483 | \$113,458 |
| 2021 Program Increases | 7 | 4 | \$796 |
| 2021 Request | 548 | 487 | \$114,254 |
| Total Change 2019-2021 | 11 | 8 | \$4,831 |

| Information Technology Breakout (of Decision Unit Total) | Direct Pos. | Estimate FTE | Amount |
|---|--------------------|-------------------------|---------------|
| 2019 Enacted | 18 | 18 | \$5,499 |
| 2020 Enacted | 18 | 18 | \$5,499 |
| Adjustments to Base and Technical Adjustments | 0 | 0 | \$0 |
| 2021 Current Services | 18 | 18 | \$5,499 |
| 2021 Program Increases | 0 | 0 | \$0 |
| 2021 Request | 18 | 18 | \$5,499 |
| Total Change 2019-2021 | 0 | 0 | \$0 |

1. Program Description

As described above, ENRD works to:

- Enforce the nation’s civil and criminal pollution-control laws,
- Defend environmental challenges to federal agency programs and activities, including the current administration’s multi-billion dollar deregulatory rulemaking efforts,
- Represent the United States in matters concerning the stewardship of the nation’s natural resources and public lands,
- Acquire real property, including for the U.S.-Mexico Border wall,
- Bring and defend cases under the wildlife protection statutes, and
- Litigate cases concerning the resources and rights of Indian tribes and their members.

A brief description of ENRD’s work and its organizational units is provided below:

The Division has a critical role enforcing federal environmental protection laws, both criminally and civilly. These include the Clean Air Act (CAA), the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Act to Prevent Pollution from Ships (APPS), the Oil Pollution Act (OPA), the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), the Toxic Substance Control Act (TSCA), and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The main federal agencies that the Division represents in these areas are the Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (Corps), the U.S. Coast Guard (USCG), and federal natural resource trustee agencies, including the U.S. Department of the Interior (Interior or DOI), the U.S. Department of Agriculture (USDA), and the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce

(DOC or Commerce). The Division's sections that carry out this work are the **Environmental Enforcement Section (EES)**, the **Environmental Defense Section (EDS)**, and the **Environmental Crimes Section (ECS)**.

The Division's defensive sections play a key role in implementing the President's environmental and energy deregulatory agenda, which has been and will continue to be challenged in federal courts across the country by states, non-governmental organizations and individuals. The regulatory impacts of these often high-profile administrative cases is estimated in the billions of dollars to the national economy. For example, the Division has recently faced legal challenges to the Affordable Clean Energy (ACE) Rule, the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule, and the new Waters of the United States (WOTUS) Rule. When such lawsuits are filed, ENRD's mission is to defend its client agencies. Defensive cases make up approximately half of our workload, with court schedules and deadlines driving the pace of work and attorney time in these types of cases.

A substantial portion of the Division's work includes litigation under a wide array of statutes related to the management of public lands and associated natural and cultural resources. All varieties of public lands are affected by ENRD's litigation docket, ranging from entire ecosystems, such as the nation's largest subtropical wetlands and rain forest, to individual rangelands or wildlife refuges, to historic battlefields and monuments. Examples of ENRD's land and natural resources litigation include original actions before the U.S. Supreme Court to address interstate boundary and water allocation issues; suits challenging federal agency decisions that affect economic, recreational, and religious uses of the national parks, national forests, and other public lands; challenges brought by individual Native Americans and Indian tribes relating to the United States' trust responsibility; and actions to recover royalties and revenues from development of natural resources, including timber and subsurface minerals. The Division primarily represents the land management agencies of the United States in these cases, including USDA's Forest Service and the many components of DOI, such as the National Park Service (NPS), Bureau of Land Management (BLM), and U.S. Fish and Wildlife Service (FWS). The **Natural Resources Section (NRS)** is primarily responsible for these cases.

The Division's **Wildlife and Marine Resources Section (WMRS)** handles civil cases arising under the Federal fish and wildlife conservation laws. This work includes defending agency actions under the Endangered Species Act (ESA), which protects endangered and threatened animal and plant species; the Marine Mammal Protection Act (MMPA), which protects marine mammals, such as whales, seals, and dolphins; and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which regulates fishery resources. The Wildlife section also has responsibility for civil enforcement and forfeiture related to federal animal welfare statutes. The **Environmental Crimes Section** brings criminal prosecutions under these laws, often through provisions of the Lacey Act, which makes interstate and international trafficking in illegal wildlife a felony. The main federal agencies that ENRD represents in this area are the FWS and NOAA's National Marine Fisheries Service (NMFS). ECS also works with agents from USDA prosecuting animal welfare crimes.

Division cases frequently involve allegations that a federal program or action violates constitutional provisions or environmental statutes. Examples include Fifth Amendment takings claims, in which landowners seek compensation based on the allegation that a government action has taken an interest in real property, and suits alleging that a federal agency has failed to comply with the National Environmental Policy Act (NEPA). Both takings and NEPA cases can affect vital federal programs, such as those governing the nation's defense capabilities (including military preparedness, weapons programs, nuclear materials management, and military research), renewable energy development, and food supply. In other cases, plaintiffs challenge regulations promulgated to implement the nation's pollution control

statutes, such as the CAA and CWA, or activities at federal facilities that are claimed to violate such statutes. The Division's main clients in these areas include the Department of Defense (DOD), EPA, the Corps, the U.S. Department of Transportation (DOT), and DOI's various components. The **Natural Resources Section** and the **Environmental Defense Section** handle these cases.

Another portion of the Division's caseload consists of eminent domain litigation. This important work, undertaken with Congressional direction or authority, involves the acquisition of land for the federal government, including for national-security related purposes, national parks, and the construction of federal buildings. The **Land Acquisition Section (LAS)** is responsible for this litigation.

The Division's **Indian Resources Section (IRS)** litigates on behalf of federal agencies to protect the lands and associated resources of federally recognized Indian tribes and their members; the United States holds the majority of these lands and resources in trust for tribes. This litigation includes defending against challenges to statutes and agency actions that protect tribal interests, and bringing suit on behalf of federal agencies to protect tribal rights, lands, and natural resources. The rights, lands, and resources at issue include water rights, hunting and fishing rights, the protection of trust lands and minerals, and the government's ability to acquire reservation land, among others. In addition, the **Natural Resources Section** defends claims asserted by Indian tribes and tribal members against the United States. The main federal agency that the Division represents in connection with this work is Interior's Bureau of Indian Affairs (BIA).

The **Appellate Section** handles the appeals of all cases originally litigated by Division attorneys in the trial courts, and works closely with the Department of Justice's Office of the Solicitor General on ENRD cases that reach the U.S. Supreme Court.

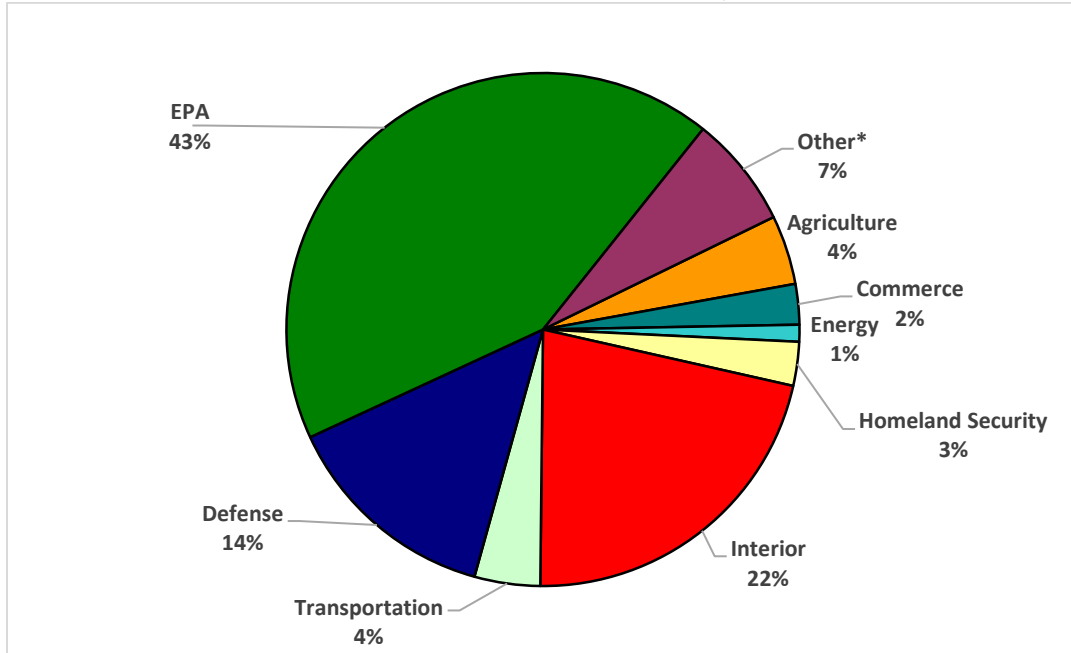
The **Law and Policy Section (LPS)** advises and assists the Assistant Attorney General on environmental and natural resources legal and policy questions, particularly those that affect multiple sections in the Division. It reviews and analyzes legislative proposals on environmental and natural resources issues of importance to the Division, handles the Division's response to Congressional requests, provides comments on behalf of ENRD on federal agency rulemakings, and handles, with the Appellate Section, *amicus curiae* participation in cases of importance to the United States. The Law and Policy Section leads the Division's efforts on international issues, often in collaboration with the Environmental Crimes Section, and handles various special projects on behalf of Division leadership. Attorneys in the Law and Policy Section also serve as the Division's ethics and professional responsibility officer and counselor. It also coordinates the Division's Freedom of Information Act (FOIA) and correspondence work. LPS, along with EPA, is leading the development of the federal Environmental Crime Victim Assistance Program.

The **Executive Office (EO)** is the operational management and administrative support section for ENRD. It provides financial management, human resources, information technology, procurement, facilities, security, litigation support, and other important services to the Division's workforce. The Executive Office takes advantage of cutting-edge technology to provide sophisticated automation facilities to ENRD employees. By utilizing new technologies and innovative business processes — and by in-sourcing services traditionally provided by contractors and equipping employees to better serve themselves — the Executive Office is able to achieve significant cost savings for the American public on an annual basis.

The **Office of the Assistant Attorney General (OAAG)** is a cadre of extraordinary attorneys who ensure the Division's work is accomplished in a timely and professional manner each day.

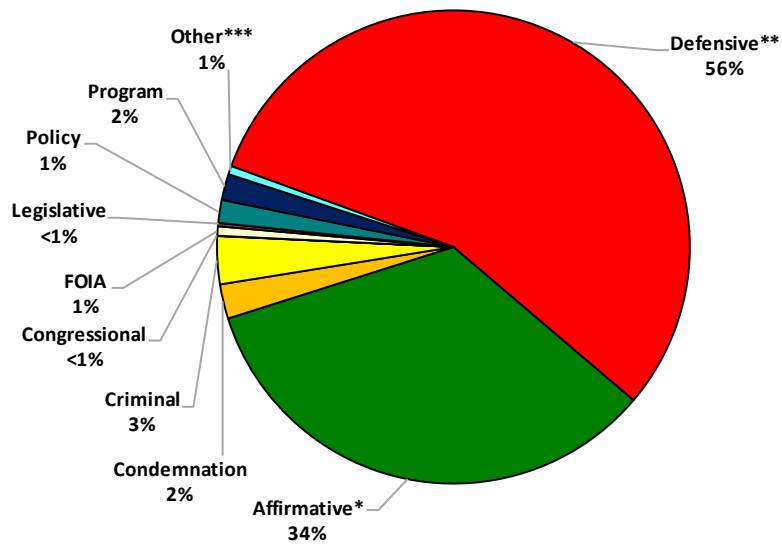
Please see *Exhibit A* for an organization chart describing ENRD's current structure.

ENRD's Cases/Matters Pending by Client Agency as of September 30, 2019
Total Cases/Matters – 6,110



*Other - includes many different Cabinet Departments and agencies with minimal numbers of cases.
 **DOJ - Most cases identified with DOJ as lead client agency are Citizen Suits.

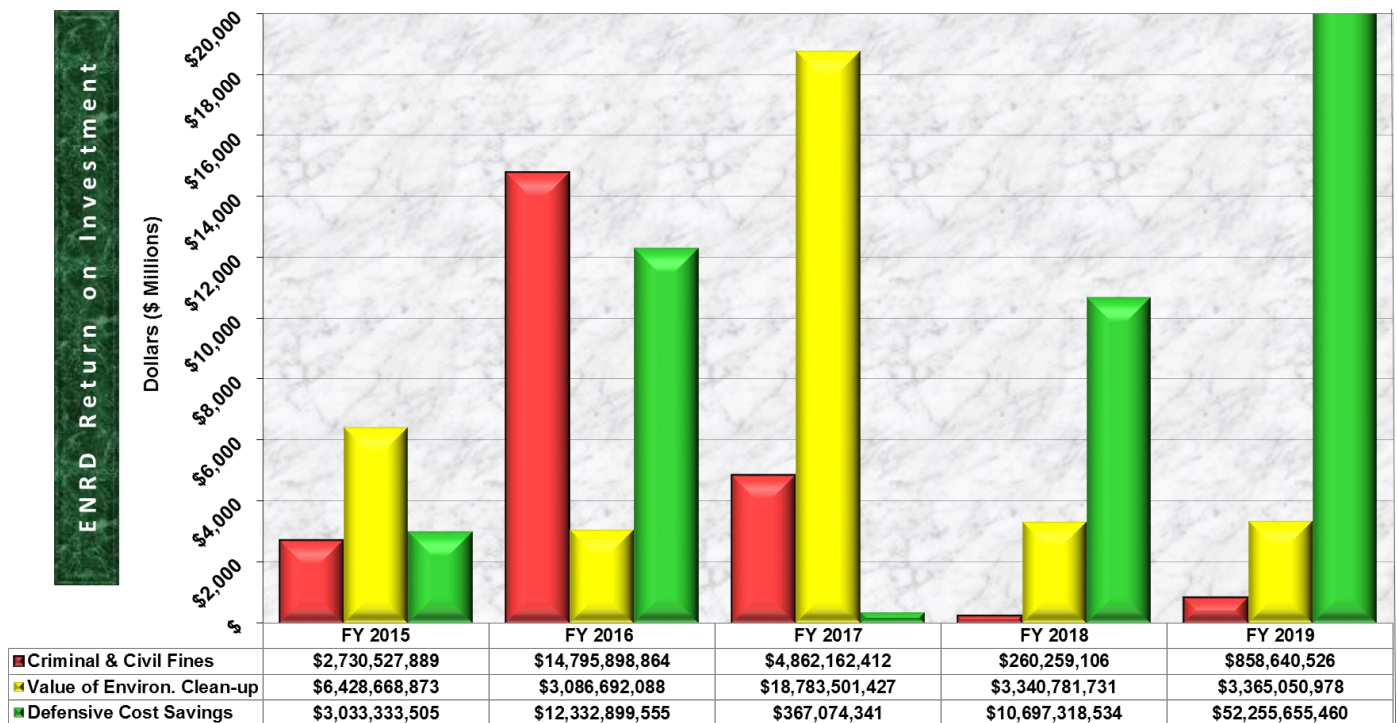
ENRD's Cases/Matters Pending by Case Type as of September 30, 2019
Total Cases/Matters – 6,110



*Affirmative - includes case types of Civil Affirmative, Amicus, and Citizen Suits.
 **Defensive - includes case types of Civil Defensive, Civil Contempt, Notices of Intent and Petitions for Review.
 ***Other represents types of work not covered by any category, such as projects, etc.

ACCOMPLISHMENTS

In FY 2019, ENRD successfully closed 1,911 matters and 1,166 cases while maintaining a robust docket of 6,110 cases, matters, and appeals. The Division recorded more than \$858.6 million in civil and criminal fines, penalties, and costs recovered. The estimated value of federal injunctive relief (clean-up work and pollution prevention actions by private parties) obtained in FY 2019 exceeded \$3.4 billion. ENRD's defensive litigation efforts avoided costs (claims) of over \$52.3 billion in FY 2019. In FY 2019, the Division achieved a favorable outcome in 99.5 percent of its civil affirmative cases, 88.0 percent of its civil defensive cases, 98.7 percent of its criminal cases and 100 percent of its condemnation cases. 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.



Civil and Criminal Fines, Penalties and Costs Imposed
(Includes Awards Payable to States, Territories, Local Governments and Indian Tribes)

Value of Clean-Up and Corrective Actions
(Includes Federal and State Superfund and Non-Superfund Injunctive Relief and Supplemental Environmental Projects)

Amount Saved in Defensive Litigation
(Excludes USAO Lead Cases)

Below are some recent notable successes from the Division's civil and criminal litigation dockets.

Civil Cases (Both Affirmative and Defensive)

- ***Fiat Chrysler / Derive Systems / Defeat Device Cases / Mobile Source Emissions Enforcement***

On January 10, 2019, ENRD announced a settlement with Fiat Chrysler Automobiles N.V., FCA US, and affiliates (Fiat Chrysler) for alleged violations of the Clean Air Act and California law. Fiat Chrysler has agreed to implement a recall program to repair more than 100,000 noncompliant diesel vehicles sold or leased in the United States, offer an extended warranty on repaired vehicles, and pay a civil penalty of

\$305 million to settle claims of cheating emission tests and failing to disclose unlawful defeat devices. Fiat Chrysler also will implement a program to mitigate excess pollution from these vehicles. The recall and federal mitigation programs are estimated to cost up to approximately \$185 million.

Over a span of multiple years, Derive sold products, including custom engine tuning software and parts, online and at distributors across the nation under the brand names of “Bully Dog” and “SCT” for use in many types of gasoline and diesel-fueled cars and trucks. Under the terms of the settlement, Derive will spend approximately \$6.25 million to bring the company and its products into compliance with the Clean Air Act. Derive will also pay a civil penalty of \$300,000.

- ***Superfund Enforcement Cases***

- On July 9, 2018, the Division, EPA and the Rhode Island Department of Environmental Management announced that two subsidiaries of Stanley Black & Decker Inc.—Emhart Industries Inc. and Black & Decker Inc.—have agreed to clean up dioxin contaminated sediment and soil at the Centredale Manor Restoration Project Superfund Site (“Site”) in North Providence and Johnston, Rhode Island.

The settlement, which includes cleanup work in the Woonasquatucket River and bordering residential and commercial properties along the river, requires the companies to perform the remedy selected by EPA for the Site in 2012, which is estimated to cost approximately \$100 million, and resolves longstanding litigation.

Under the settlement, Emhart and Black & Decker reimbursed EPA for approximately \$42 million in past costs incurred at the Site. The companies will also reimburse EPA and the State of Rhode Island for future costs incurred by those agencies in overseeing the work required by the settlement. The settlement will also include payments on behalf of two federal agencies to resolve claims against those agencies. These payments, along with prior settlements related to the Site, will result in a 100 percent recovery for the United States of its past and future response costs related to the Site.

- ***Clean Air Act Litigation***

- On October 31, 2017, the Division, EPA and the Louisiana Department of Environmental Quality announced a settlement with ExxonMobil Corp. and ExxonMobil Oil Corp. that will eliminate thousands of tons of harmful air pollution from eight of Exxon’s petrochemical manufacturing facilities in Texas and Louisiana. The settlement resolves allegations that ExxonMobil violated the Clean Air Act by failing to properly operate and monitor industrial flares at their petrochemical facilities, which resulted in excess emissions of harmful air pollution.

ExxonMobil will spend approximately \$300 million to install and operate air pollution control and monitoring technology to reduce harmful air pollution from 26 industrial flares at five ExxonMobil facilities in Texas—located near Baytown, Beaumont, and Mont Belvieu—and three of the company’s facilities in Baton Rouge, Louisiana. Once fully implemented, the pollution controls required by the settlement are estimated to reduce harmful air emissions of volatile organic compounds (VOCs) by more than 7,000 tons per year. The settlement is also expected to reduce toxic air pollutants, including benzene, by more than 1,500 tons per year.

- In partnership with the State of Indiana and EPA, in the case *U.S. & Ind. Dept. of Env'tl. Mgmt. v. SunCoke Energy, et al* (N.D. Ind. 2019), the Division obtained a Clean Air Act settlement reducing illegal, harmful air emissions, including sulfur dioxide and lead emissions, by securing needed rebuilds of coking ovens and adherence to improved operational and testing requirements. Defendants must pay a total civil penalty of \$5 million. Defendants also must partly redress past, illegal emissions through a \$250,000 lead abatement program in area schools, day care centers, and other buildings - with priority to those frequented by young children and pregnant women.
- In September 2018, ENRD and the EPA announced a settlement with NGL Crude Logistics, LLC that requires the company to retire 36 million renewable fuel credits and pay a \$25 million civil penalty under the settlement to resolve violations of the Renewable Fuel Standard (RFS) program. The cost of the RIN retirement is approximately \$10 million. ENRD and EPA alleged that NGL entered into a series of transactions with Western Dubuque Biodiesel, LLC in 2011 that resulted in the generation of an extra set of renewable fuel credits for approximately 24 million gallons of biodiesel. NGL's scheme generated approximately 36 million additional credits, known as Renewable Identification Numbers or RINs.

- ***Oil Spill Enforcement***

On July 24, 2018, ENRD and EPA reached a settlement with CSX Transportation over the 2015 derailment and oil spill in Mount Carbon, WV. Under the terms of the settlement, CSX Transportation will pay penalties of \$1.2 million to the United States and \$1 million to West Virginia. On February 16, 2015, a CSX Transportation train with 109 railcars carrying crude oil derailed in Mount Carbon. Twenty-seven tank cars, each containing approximately 29,000 gallons of Bakken crude oil, derailed, and about half of the tank cars ignited. The resulting explosions and fires destroyed an adjacent home and garage. Local officials declared a state of emergency, nearby water intakes were shut down, and residents in the area were evacuated.

Criminal Cases

- ***Volkswagen / Defeat Device Cases***

In December 2018, IAV GmbH (IAV), a German company that engineers and designs automotive systems, agreed to plead guilty to one criminal felony count and pay a \$35 million criminal fine as a result of the company's role in a long-running scheme for Volkswagen AG (VW) to install defeat devices on diesel vehicles in order to cheat on U.S. vehicle emissions tests that are required by federal law in order to sell their vehicles in the United States.

- ***Vessel Pollution Cases***

On May 10, 2018, Nitta Kisen Kaisha Ltd ("Nitta"), a Japanese shipping company that delivered steel products to Wilmington, NC, was convicted and sentenced for obstruction of justice and falsification of an Oil Record Book to cover-up intentional oil pollution from the Motor Vessel Atlantic Oasis. The company admitted that its engineers failed to document the illegal discharge of oily wastes from the vessel's fuel and lubrication oil purifier systems, as well as discharges of oily bilge waste from the bilge holding tank and from the vessel's bilges. Nitta was ordered to pay a fine of \$1 million; placed on probation for a period of three years; and further ordered to implement a court-approved comprehensive Environmental Compliance Plan as a special condition of probation, which will be audited throughout probation.

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

- Operation Crash (a “crash” is a herd of rhinoceros) is an ongoing nationwide effort led by the Fish and Wildlife Service and ENRD in conjunction with U.S. Attorneys’ Offices to investigate and prosecute those involved in the black market trade of rhinoceros horns and other protected species, which continues to produce numerous successful prosecutions. Thus far, 50 individuals and companies have been charged as part of Operation Crash. The sentences imposed totaled more than 40 years’ incarceration, over \$2.1 million in fines, and forfeiture and restitution in the amount of \$7.8 million. All rhinoceros species are protected under United States and international law, and the black rhinoceros is listed as endangered under the Endangered Species Act. Recent successes include: a 27-month sentence for illegally trafficking in rhinoceros horn; an 18-month sentence for an Irish national who was successfully extradited from Belgium and pled guilty to an indictment in Miami for his involvement in a conspiracy, smuggling of a carved rhinoceros horn and obstruction of justice; and a sentence of time served (19 months incarceration) for a defendant extradited from Australia who pled guilty to an indictment charging him with being the ringleader in a conspiracy to smuggle protected rhinoceros horn, elephant ivory and coral from the United States to China.

- ***Biodiesel Fraud Prosecutions***

In February 2018, ENRD achieved a sentence of a New York man, Andre Bernard, to seven years and three months in federal prison for his role in a multi-state scheme to defraud biodiesel buyers and U.S. taxpayers by fraudulently selling biodiesel credits and fraudulently claiming tax credits. As part of his sentence, the Court also entered a money judgment in the amount of \$10.5 million, the proceeds Bernard personally received as a result of the charged criminal conduct. Two accounts previously seized accounts worth more than \$1.5 million will be credited against the money judgment.

- ***Protecting Human Health from Unlawful Uses of Pesticides***

On September 17, 2018, a former Branch Manager of Terminix International Company LP and U.S. Virgin Islands operation Terminix International USVI LLC pleaded guilty to four counts of an indictment charging violations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) for illegally applying fumigants containing methyl bromide in multiple residential locations in the U.S. Virgin Islands, including the condominium resort complex in St. John where a family of four fell seriously ill in 2015, after the unit below them was fumigated. On November 20, 2017, Terminix was sentenced to pay a total of \$10 million in criminal fines, community service, and restitution payments. Specifically, Terminix, USVI will pay \$4 million in fines and \$1 million in restitution to the EPA for response and clean-up costs at the St. John resort. Terminix LP will pay a fine of \$4 million and will perform community service related to training commercial pesticide applicators in fumigation practices and conduct a separate health services training program.

- ***Enforcing the Animal Welfare Laws***

Operation Grand Champion is an ongoing multi-jurisdictional dog fighting investigation conducted by the U.S. Department of Agriculture Office of Inspector General, Federal Bureau of Investigation, and Homeland Security Investigations. Twelve individuals were arrested, and the Division brought charges against them for their role in a large dog-fighting enterprise. One defendant pleaded guilty to two counts of conspiring to buy, sell, receive, transport, deliver, and possess dogs intended for use in an animal fighting venture and one count of unlawful possession of a dog intended for use in an animal fighting

venture. In March 2018, the defendant was sentenced to 42 months' incarceration. Thus far, the Operation has resulted in 7 guilty pleas, 98 dogs rescued, and just under 11 years' incarceration.

- ***Criminal Enforcement of Core Environmental Laws***

On February 27, 2018, Tyson Poultry Inc. was sentenced in federal court in Springfield, Missouri, to pay a \$2 million criminal fine, serve two years of probation, and pay \$500,000 to directly remedy harm caused when it violated the Clean Water Act. The charges stemmed from ammonia discharges at Tyson's slaughter and processing facility in Monett, Missouri that led to an event that killed approximately 108,000 fish in the Clear Creek.

Under the terms of the plea agreement, Tyson Poultry also agreed to retain an independent, third-party auditor to examine environmental compliance at Tyson Poultry facilities across the country; conduct specialized environmental training at all of its poultry processing plants, hatcheries, feed mills, rendering plants, and waste water treatment plants; and implement improved policies and procedures to address the circumstances that gave rise to these violations.

2. Performance and Resources Table

| Decision Unit/Program: Environment & Natural Resources Division | | | | | | | | | | | |
|---|--|-----------------------|----------------------|-----------------------|----------------------|--------------------------|----------------------|--|--------------|------------------------|----------------------|
| | | Target FY 2019 | | Actual FY 2019 | | Projected FY 2020 | | Current Services Adjustments and FY2021 Program Changes | | FY 2021 Request | |
| WORKLOAD/RESOURCES 1/ | | | | | | | | | | | |
| DIVISION TOTAL WORKLOAD | # of Cases & Matters (Active & Closed) | 5,275 | | 6,110 | | 5,632 | | | | 5,632 | |
| | # of Cases Successfully Resolved/Success Rate | 83% | | 94% | | 83% | | | | 83% | |
| CIVIL | 1. Number of cases (active & closed) | 4,700 | | 5,448 | | 5,000 | | | | 5,000 | |
| | 2. Number of matters (active & closed) | 272 | | 374 | | 360 | | | | 360 | |
| CRIMINAL | 3. Number of cases (active & closed) | 265 | | 254 | | 230 | | | | 230 | |
| | 4. Number of matters (active & closed) | 38 | | 34 | | 42 | | | | 42 | |
| DIVISION RESOURCES - Total Year Costs & FTE's (Appropriated only) Bracketed number represents Reimbursable FTE and are not included in the cost. | | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 |
| | | 532[74] | 109,423 | 479[41] | 108,672 | 481[41] | \$ 109,423 | 7 | 4,831 | 487[41] | \$ 114,254 |
| Program Activity | | | | | | | | | | | |
| PERFORMANCE/RESOURCES | | Target FY 2019 | | Actual FY 2019 | | Projected FY 2020 | | Current Services Adjustments and FY2021 Program Changes | | FY 2021 Request | |
| CIVIL | | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 |
| | TOTAL COSTS & FTE | 479 | \$ 98,481 | 431 | \$ 97,805 | 433 | \$ 98,481 | 7 | \$ 4,831 | 440 | \$ 103,312 |
| | OUTPUT 1/ | Active | Closed | Active | Closed | Active | Closed | | | Active | Closed |
| | 1. Number of cases active/closed | no estimate | no estimate | 3,389 | 2,059 | no estimate | no estimate | | | no estimate | no estimate |
| | 2. Number of matters active/closed | no estimate | no estimate | 204 | 170 | no estimate | no estimate | | | no estimate | no estimate |
| | OUTCOME* | # Resolved | Success Rate | # Resolved | Success Rate | # Resolved | Success Rate | | | # Resolved | Success Rate |
| | 1. Affirmative cases successfully resolved | no estimate | 85% | 185 | 99% | no estimate | 85% | | | no estimate | 85% |
| | 2. Defensive cases successfully resolved | no estimate | 75% | 405 | 90% | no estimate | 75% | | | no estimate | 75% |
| | 3. Penalties Awarded 2/* | Superfund | Non-Superfund | Superfund | Non-Superfund | Superfund | Non-Superfund | | | Superfund | Non-Superfund |
| | - Federal | no estimate | no estimate | no estimate | no estimate | no estimate | no estimate | | | no estimate | no estimate |
| | - State | no estimate | no estimate | no estimate | no estimate | no estimate | no estimate | | | no estimate | no estimate |
| | 4. Clean-up Costs Awarded 4/ | | | | | | | | | | |
| | - CERCLA Federal Cost Recovery 3/ 5/ | no estimate | no estimate | no estimate | no estimate | no estimate | no estimate | | | no estimate | no estimate |
| | - Federal Injunctive Relief | no estimate | no estimate | no estimate | no estimate | no estimate | no estimate | | | no estimate | no estimate |
| | - CERCLA State Cost Recovery | no estimate | no estimate | no estimate | no estimate | no estimate | no estimate | | | no estimate | no estimate |
| | - State Injunctive Relief | no estimate | no estimate | no estimate | no estimate | no estimate | no estimate | | | no estimate | no estimate |
| | 5. Supplemental Environmental Projects (SEP's) 6/ | | | | | | | | | | |
| | - Value of Federal SEP's | no estimate | no estimate | no estimate | no estimate | no estimate | no estimate | | | no estimate | no estimate |
| | - Value of State SEP's | no estimate | no estimate | no estimate | no estimate | no estimate | no estimate | | | no estimate | no estimate |
| | 6. Environmental Mitigation Projects 7/ | | | | | | | | | | |
| | 7. Costs Avoided (Saved the U.S. in Defense Cases) 8/ | no estimate | no estimate | no estimate | no estimate | no estimate | no estimate | | | no estimate | no estimate |

Performance and Resources Table (Cont.)

| CRIMINAL | TOTAL COSTS & FTE | FTE | \$000 | FTE | \$000 | FTE | \$000 | | | FTE | \$000 |
|---|-------------------|--------------|-------------|--------------|-------------|--------------|-----------|---|-------------|--------------|-----------|
| | | 53 | \$ 10,942 | 48 | \$ 10,867 | 48 | \$ 10,942 | 0 | \$ - | 47 | \$ 10,942 |
| OUTPUT 1/ | Active | Closed | Active | Closed | Active | Closed | | | Active | Closed | |
| 1. Number of cases active/closed | no estimate | no estimate | 174 | 80 | no estimate | no estimate | | | no estimate | no estimate | |
| 2. Number of matters active/closed | no estimate | no estimate | 34 | - | no estimate | no estimate | | | no estimate | no estimate | |
| OUTCOME* | # Resolved | Success Rate | # Resolved | Success Rate | # Resolved | Success Rate | | | # Resolved | Success Rate | |
| 1. Number of criminal cases successfully resolved | no estimate | 90% | 92 | 99% | no estimate | 90% | | | no estimate | 90% | |
| 2. Dollars Awarded | | | | | | | | | | | |
| - Fines 9/ | no estimate | no estimate | no estimate | no estimate | no estimate | no estimate | | | no estimate | no estimate | |
| - Restitution | no estimate | no estimate | no estimate | no estimate | no estimate | no estimate | | | no estimate | no estimate | |
| - Community Service Funds 10/ | | | | | | | | | | | |
| 3. Criminal Environmental Compliance Plan 11/ | no estimate | no estimate | no estimate | no estimate | no estimate | no estimate | | | no estimate | no estimate | |

Additional Explanation for Targets, Program Changes, and Program Requests

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

Data Definition, Validation, Verification, and Limitations:

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

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

Cases and matters reported here are those that had time reported.

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

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

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

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

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

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

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

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

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

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

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

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

Data Limitations: Timeliness of notification by the courts.

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

Performance Measure Table

| PERFORMANCE MEASURE TABLE | | | | | | | | | |
|---|---|--|---------|---------|---------|---------|---------|---------|---------|
| Decision Unit: Environment and Natural Resources Division | | | | | | | | | |
| Strategic Objectives | Performance Report and Performance Plan Targets | | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 | FY 2021 |
| | | | Actual | Actual | Actual | Actual | Actual | Target | Target |
| 2.2, 4.1, 4.3 | EFFICIENCY Measure | Total dollar value awarded per \$1 of expenditures (Affirmative) | \$132 | \$251 | \$295 | \$51 | \$60 | \$81 | \$81 |
| 2.2, 4.1, 4.3 | EFFICIENCY Measure | Total dollars saved the government per \$1 of expenditures (Defensive) | \$42 | \$162 | \$5 | \$131 | \$664 | \$22 | \$22 |
| 2.2, 4.1, 4.3 | OUTCOME Measure | Civil affirmative cases successfully resolved | 99% | 99% | 98% | 100% | 99% | 85% | 85% |
| 2.2, 4.1, 4.3 | OUTCOME Measure | Civil defensive cases successfully resolved | 93% | 93% | 93% | 92% | 90% | 75% | 75% |
| 2.2, 4.1, 4.3 | OUTCOME Measure | Criminal cases successfully resolved | 95% | 96% | 97% | 100% | 99% | 90% | 90% |
| 2.2, 4.1, 4.3 | OUTPUT Measure | Number of criminal cases (active and closed) 1/ | 267 | 270 | 236 | 239 | 254 | 230 | 230 |
| 2.2, 4.1, 4.3 | OUTPUT Measure | Number of criminal matters (active and closed) 1/ | 48 | 47 | 42 | 45 | 34 | 42 | 42 |
| 2.2, 4.1, 4.3 | OUTPUT Measure | Number of civil cases (active and closed) 1/ | 5,059 | 4,766 | 4,948 | 5,317 | 5,448 | 5,000 | 5,000 |
| 2.2, 4.1, 4.3 | OUTPUT Measure | Number of civil matters (active and closed) 1/ | 328 | 302 | 443 | 450 | 374 | 360 | 360 |

1/ Cases and matters are those with time reported.

3. Performance, Resources, and Strategies

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 greater environmental compliance. Working together with federal, state and local law enforcement, the Department is meeting the challenges of increased referrals and more complex criminal cases through training of agents, officers and prosecutors, outreach programs, and domestic and international cooperation.

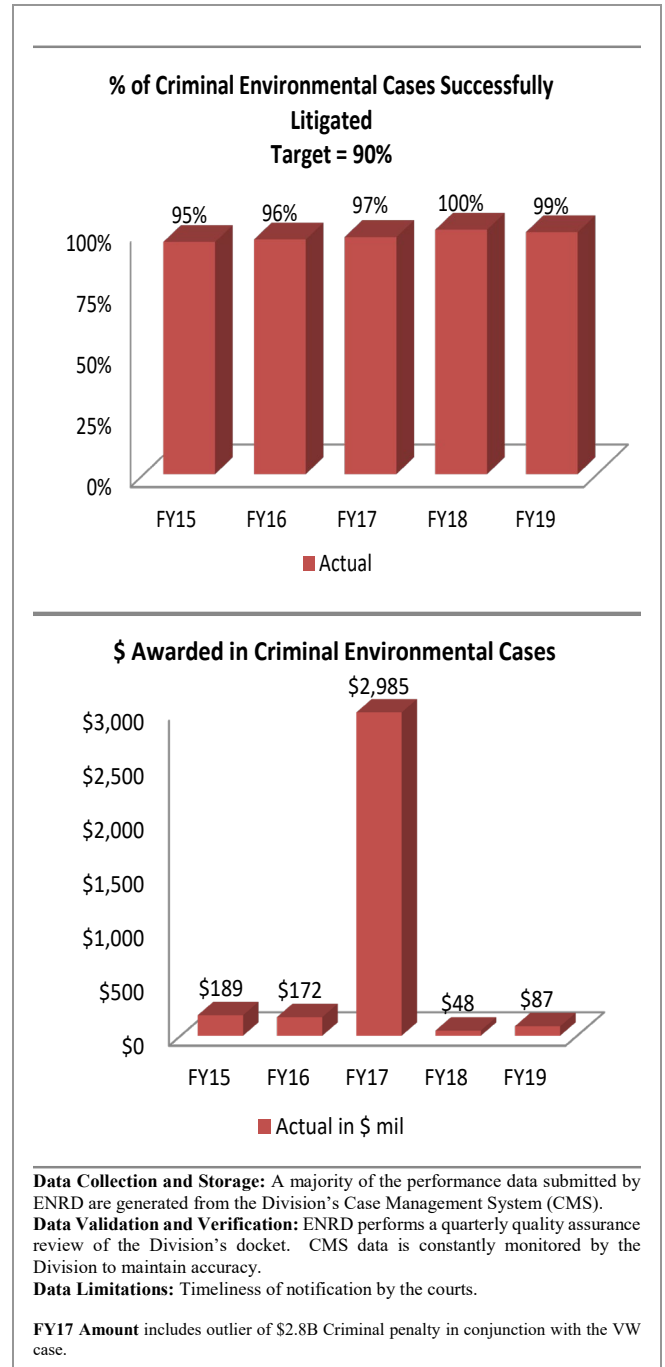
I. Performance Measure - Percent of Criminal Environmental Cases Successfully Resolved

❖ ***FY 2021 Target: 90%***

❖ ***FY 2019 Actual: 99%***

Discussion: ENRD exceeded its FY 2019 success rate goal by +9%. As discussed in the “Accomplishments” section of this budget document, over the past year, the Division prosecuted a number of important, often complex, and high-profile vessel pollution, wildlife trafficking, biodiesel fraud, illegal timber harvesting, worker safety and other environmental criminal cases.

FY 2021 Performance Plan: We have set our target at 90 percent of cases successfully litigated for FY 2021. 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 2021 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.*
- ❖ *FY 2019 Actual: \$858.6 million*

Discussion: While ENRD does not establish monetary goals for this metric, the Division is pleased to report that in FY 2019 we imposed \$858.6 million in criminal fines and monetary impositions. As discussed in the "Accomplishments" section of this budget document, over the past year, ENRD prosecuted a number of important, often complex, and high-profile vessel pollution, wildlife trafficking, biodiesel fraud, illegal timber harvesting, worker safety and other environmental crimes.

FY 2021 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance for FY 2021 are not projected for this indicator. Many factors affect our overall performance, such as proposed legislation, judicial calendars, etc. The performance of the Division tends to reflect peaks and valleys when large cases are decided. Therefore, we do not project targets for this metric annually.

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

B. Strategies to Accomplish Outcomes

The Division establishes strategies for performance and accomplishments relating to the Department's Strategic Plan for FY 2019 – FY 2022. The Division's strategies are based off of the following priority goals and objectives:

Strategic Goal 2 – Secure the Borders and Enhance Immigration and Adjudication

Strategic Objective 2.2 – Ensure an immigration system that respects the rule of law, protects the safety of U.S. Citizens and legal aliens and serves the national interest

Strategic Goal 4 – Protect the Rule of Law, Integrity, and Good Government

Strategic Objective 4.1 – Uphold the rule of law and integrity in the proper administration of justice

Strategic Objective 4.3 – Pursue regulatory reform initiatives

The Division will continue to uphold the rule of law by obtaining convictions and deterring environmental crimes through initiatives focused on vessel pollution, RIN fraud, 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.

The Division has worked, and will continue to work, collaboratively with other federal agencies to identify violators who pose a significant threat to public health. By prosecuting criminal violations of regulations intended to protect the health of Americans, ENRD is forcing compliance and discouraging continued disregard for the public health and welfare of its citizens.

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.

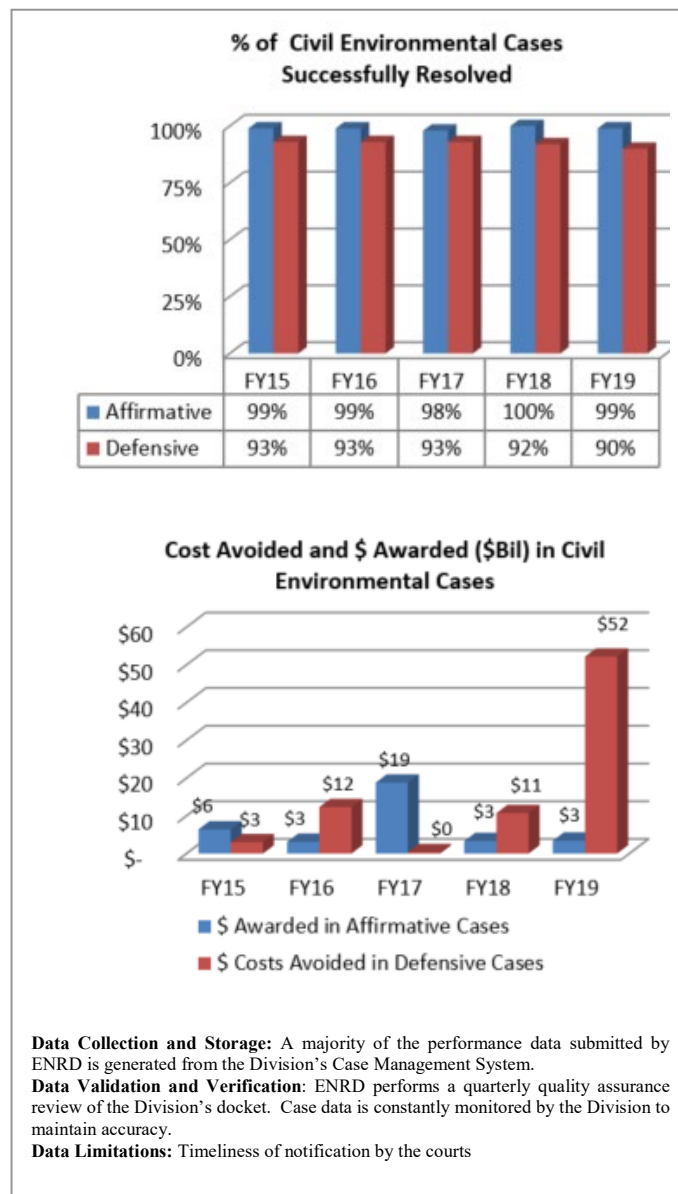
I. Performance Measure - Percent of Civil Environmental Cases Successfully Resolved

- ❖ **FY 2021 Targets**
85% Affirmative; 75% Defensive
- ❖ **FY 2019 Actual**
99% Affirmative; 90% Defensive

Discussion: FY 2019 was a particularly successful year for ENRD. The Division exceeded its civil affirmative success target by +14%, and its civil defensive target by +15%. As described elsewhere in this document, ENRD achieved extraordinary success enforcing the nation's core environmental statutes and defending the Administration and its federal agencies from lawsuits involving a wide variety of statutes and actions.

FY 2019-2022 Performance Plan: Considering our past performance, we aim to achieve litigation success rates of 85 percent affirmative cases and 75 percent defensive cases (average of 80 percent overall) for FY 2019 through FY 2022. 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 "ambitious" goals. This sort of easy approach would do a disservice to the public by steering litigation away from more difficult problems facing the country's environment and natural resources. Our targets are set at demonstrably achievable levels and do not deter high performance.

Public Benefit: ENRD's success in the area of civil defensive litigation will include winning challenges to environmental and energy deregulatory actions. Victories in these often high-



profile administrative cases is estimated to provide value in the billions of dollars to the national economy. The success of the Department also 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 \$ Injunctive Relief / Environmental Clean-up Awarded in Civil Environmental Cases

- ❖ ***FY 2021 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.***
- ❖ ***FY 2019 Actual: \$52.3 billion avoided; \$3.4 billion awarded***

Discussion: ENRD had a remarkably successful year in FY 2019 avoiding costs in defensive cases and imposing injunctive relief on polluters. ENRD's efforts in this area protected and preserved the federal fisc and also compelled polluters – rather than federal, state and local governments – to pay for pollution controls and compliance measures and for environmental clean-up and restoration efforts for which they were responsible.

FY 2019/2021 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 tends to reflect peaks and valleys when large cases are decided. Therefore, we do not project targets for this metric annually.

Public Benefit: The Division's success in this area ensures that violators of the nation's pollution control and hazardous waste management laws implement adequate controls to prevent or reduce harmful discharges into the nation's water, land and air. The improved quality of air, water and natural resources provides significant health benefits to the American people.

III. Efficiency Measures

Total Dollars Saved the Government per \$1 Expenditures

- ❖ ***FY 2021 Targets: \$81 awarded; \$22 saved***
- ❖ ***FY 2019 Actual: \$60 awarded; \$664 saved***

FY 2019/2021 Performance Plan: The Division has an exemplary record in protecting the environment, Indian rights, and the nation's natural resources, wildlife, and public lands. ENRD anticipates continued success through vigorous enforcement efforts which generally will produce settlements and significant gains for the public and the U.S. Treasury.

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 United States citizens.

B. Strategies to Accomplish Outcomes

The Division establishes strategies for performance and accomplishments relating to the Department's Strategic Plan for FY 2019 – FY 2022. The Division's strategies are based off of the following priority goals and objectives:

Strategic Goal 2 – Secure the Borders and Enhance Immigration and Adjudication

Strategic Objective 2.2 – Ensure an immigration system that respects the rule of law, protects the safety of U.S. Citizens and legal aliens and serves the national interest

Strategic Goal 4 – Protect the Rule of Law, Integrity, and Good Government

Strategic Objective 4.1 – Uphold the rule of law and integrity in the proper administration of justice

Strategic Objective 4.3 – Pursue regulatory reform initiatives

The Division will continue its efforts to fulfill the requirements of Executive Order 13767 on Border Security and Immigration Enforcement Improvements through the acquisition of land (along with developing associated title and appraisal work) associated with the construction along the Southwest border. The Division will also continue its efforts to defend federal agencies – such as the U.S. Customs and Border Protection and the U.S. Army Corps of Engineers – as they take actions to install strategic infrastructure along the Southwest U.S. border.

VI. Program Increases

A. A Common-Sense and Effective Approach to Environmental Litigation: Defending the Administration’s Environmental Rulemaking and Natural Resources Reform Agenda and Enforcing the Nation’s Pollution Control Laws

| | |
|----------------------------|---|
| Item Name: | A Common-Sense and Effective Approach to Environmental Litigation |
| DOJ Focus Area: | Enforcing the Nation’s Laws |
| Strategic Plan Support: | Strategic Goal 4: Promote Rule of Law, Integrity, and Good Government |
| Budget Decision Unit(s): | Environment and Natural Resources Division |
| Organizational Program(s): | <i>Appellate Section (“APP”)</i> <i>Environmental Defense Section (“EDS”)</i> <i>Environmental Enforcement Section (“EES”)</i> <i>Natural Resources Section (“NRS”)</i> <i>Wildlife and Marine Resources Section (“WMRS”)</i> |
| Program Increase: | Positions <u>7</u> Atty <u>5</u> FTE <u>4</u> Dollars <u>\$796,000</u> |

1. Description of the Item

ENRD is requesting \$796,000, including 7 positions (5 attorneys) and 4 FTEs, to support a *Common-Sense and Effective Approach to Environmental Litigation: Defending the Administration’s Environmental Rulemaking and Natural Resources Reform Agenda and Enforcing the Nation’s Pollution Control Laws.*

Description of *Defending the Administration’s Environmental Rulemaking and Natural Resources Reform Agenda*

ENRD is seeking additional resources to support the Division’s defense of this Administration’s pollution control and natural resource regulatory reform agenda. This enhancement request will allow the Division to hire additional attorneys and staff to address these workload demands, and allow the best possible defense of the Administration’s priority actions.

This Administration has prioritized regulatory reform in implementation of the Clean Water Act (CWA), the Clean Air Act (“CAA”) and other pollution control statutes, while at the same time insuring that the core principles of these statutes—to protect our air and water—are respected. Additionally, this Administration has taken on revision and reform of natural resource statutes, regulations and federal agency actions that govern public lands in a way that balances energy and resource development with resource protection as provided under various natural resource laws.

The proposed increase will support the legal defense of new regulations and other agency actions in court. Virtually every significant agency action implementing this agenda has been or will be challenged. ENRD's three defensive sections, Natural Resources Section ("NRS"), Environmental Defense Section ("EDS"), and Wildlife and Marine Resources Section ("WMRS"), with the Appellate Section ("APP"), bear the weight of this work. However, as reflected in the Division's case hours data, these sections are operating under enormous strain, with attorneys' handling heavy caseloads which include both Administration priority matters as well as other defensive litigation that imposes deadlines which must be met.

Description of *Enforcing the Nation's Pollution Control Laws*

Through this initiative, ENRD also seeks to (1) vindicate the rule of law principles that protect the health and safety of the American people; (2) advance the Division's enforcement of the nations' environmental protection laws; and (3) protect the public fisc. The proposed increase will foster timelier, more effective enforcement of the law.

Recent budget constraints and caseload pressures have led to delays in processing environmental enforcement actions resulting in noticeable lags in enforcement work. Delayed enforcement is less effective at remedying environmental harms and deterring future illegal conduct. It also can lead to stale claims and weaker cases.

Examples of the case types that would benefit from the proposed enhancement include:

- Preventing and Policing Chemical Explosions and Fires
- Countering Sabotage of Pollution Control Devices required on Motor Vehicles and Engines
- Punishing and Curing Violations that Emit Hazardous Air Pollutants that can Cause Cancer or Similarly Serious Health Effects
- Combatting Oil Spills from Vessels, Pipelines, Tanks
- Protecting Children from Exposure to Lead

2. Justification

Justification for *Defending the Administration's Environmental Rulemaking and Natural Resources Reform Agenda*

A. *Defense of the Administration's Environmental Regulatory Reform Agenda*

The Division defends many Environmental Protection Agency rules. EPA recently posted its May 22, 2019 Spring Regulatory Agenda, with a very long list of final rules expected to come out in 2019/2020, many of which will be the subject of litigation. See "EPA Agency Rule List-Spring 2019" (*Attachment 1*). The reforms were designed to address concerns about the burden of environmental regulations on American businesses, as well as the imbalance in power between the states and federal government. Proper defense of these rules will have a significant impact on the U.S. economy. A few key examples are discussed below.

In response to E.O. 13778, “Restoring the Rule of Law, Federalism and Economic Growth by Reviewing ‘Waters of the United States’ Rule,” two rules are targeted for 2020. The first rulemaking proposes to rescind the prior Administration’s 2015 regulation. The second rulemaking proposes a new, revised definition of “waters of the United States.” Each of these rulemaking proposals has received high levels of attention from a number of industry groups and environmental organizations, resulting in hundreds of thousands of comments on the proposed rules. Challenges to the forthcoming rules will be in various district courts, with a flurry of complaints likely to be filed immediately after the rules are finalized, followed by motions for preliminary injunctions and an intense level of simultaneous litigation well into 2020 and 2021. Decisions in these cases will likely generate appeals in multiple circuit courts.

The Division will also have to devote significant resources to defending EPA’s actions to properly implement a CAA program to control greenhouse gas emissions from power plants. It is anticipated that EPA will take final action this year to repeal and replace the prior Administration’s “Clean Power Plan” (“CPP”). The CPP was premised on a novel and expansive view of agency authority that departed from EPA’s longstanding approach of requiring plants to develop the best demonstrated technologies for their specific facilities. Following a lawsuit brought by 27 states and dozens of other groups, the Supreme Court halted the implementation of the CPP. EPA has proposed to replace the CPP with the Affordable Clean Energy (“ACE”) Rule. The ACE Rule is expected to include guidelines governing carbon dioxide emissions for coal-fired power plants; again, a rule likely to garner immediate and multiple legal challenges.

Other EPA rules expected in this or next year include the “Safer Affordable Fuel-Efficient Vehicles Rule,” expected to revise greenhouse gas emission and fuel economy standards for model year 2021-2026 cars and light trucks to reflect a more appropriate balance of safety, cost, technology, fuel conservation and pollution reduction. The final rule should decrease the cost of new cars by thousands of dollars, leading to the increased use of newer, safer and more fuel-efficient vehicles. EPA’s actions under the CAA’s Renewable Fuels Standard (“RFS”) is an active and burgeoning part of the Division’s petition for review practice. The Division is currently engaged on several fronts in the Courts of Appeal, relating to multiple aspects of the program, with more litigation likely, as requirements occur on an annual basis.

The Division will defend other areas of EPA’s rulemaking under this Administration. New Toxic Substances Control Act provisions will require new rules. Regional Haze state implementation plans to reduce pollution are generally challenged as being both too restrictive and not restrictive enough. Air transport rulemakings, including “good neighbor” rules, will likewise be challenged from all sides. The majority of these EPA rules are very technical and legally complex, which increases the demands of a successful defense.

B. Defense of the Administration’s Energy and Infrastructure Agenda

Regulatory reform is a top priority for the President. Within days of his inauguration, President Trump issued several directives related to Division litigation, including E.O 13766, “Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects,” and two Presidential Memoranda regarding construction of the Keystone and Dakota Access Pipelines. The Division continues to defend ongoing litigation regarding both pipeline projects. These

Presidential actions were followed soon by several others for which the Division has been responsible, including E.O. 13783, “Promoting Energy Independence and Economic Growth.” See “Executive Orders and Presidential Memoranda” (*Attachment 2*).

Aggressive defense of agency rulemakings implementing high priority infrastructure, energy and natural resource development, as well as a broad spectrum of other defensive litigation, requires substantial Division resources. Two statutes in particular are routinely used by plaintiffs to stall permitting decisions and infrastructure projects. The National Environmental Policy Act (“NEPA”), requires all federal agencies to examine the environmental impacts of its actions. Generating constant and varied litigation, NEPA is often the statute of choice for an entity seeking to disrupt a federal project. Another statute that is often invoked to delay projects is the Endangered Species Act (“ESA”), which requires federal agencies to insure their actions do not “jeopardize” endangered species. The balance that the Federal agency decision maker must achieve between meeting the agency’s particular mission while complying with NEPA and the ESA is often a difficult one that leads to frequent litigation that strains Division resources. This Administration’s rulemakings have indeed generated just such cases.

In addition to defending the Keystone and Dakota Access pipeline challenges, the Division handles a high volume of other energy development litigation, including challenges to multiple stages of both on land and offshore oil and gas leasing, authorizations for coal mining, approvals of oil spill response plans, venting and flaring rules, hydrofracking restrictions, and management of royalties. NEPA and the ESA have been invoked to challenge these projects, with plaintiffs arguing for consideration of different or environmentally more favorable alternatives as allegedly required under NEPA, and asserting that species protection has been ignored in violation of the ESA. Division attorneys are currently defending the first step for oil and gas development off the Atlantic shore – authorizations for seismic testing – which have been challenged by almost all Atlantic coast states, other state entities and several environmental organizations, under NEPA and the ESA. Litigation is a constant around both land based and offshore energy development.

The Division’s largest defensive section, NRS, is presently handling challenges to approximately 150 oil and gas leases which cover 4.67 billion acres of federal land. At stake is over \$2 billion in royalties and payments which the U.S. typically collects per year. Oil and gas leases and other authorizations for operation in the Gulf of Mexico are subject to tight regulation under the Outer Continental Shelf Lands Act, and challenges frequently ensue. Leasing activity in the Gulf is substantial; the March 2019 Gulf of Mexico Lease Sale 252 generated \$245 million in high bids for 227 tracts covering 1.3 million acres of the Gulf. 30 companies participated in the lease sale. In the years after the Deepwater Horizon disaster, environmental organizations are quick to litigate any defect in leasing processes, and we expect the same here.

C. Defense of Balanced Federal Land Use

Other land management issues are at the forefront of this Administration. President Trump issued an Executive Order and two Proclamations regarding review and possible revision of monuments designated under the Antiquities Act, specifically directing action to consider reduction of the Bears Ears and Grand Staircase Escalante Monuments in Utah. Numerous challenges to

reductions of these monuments are pending in courts, and more such litigation is expected as the Administration considers other monument revisions.

This administration has made it a priority to insure that resource development gets fair consideration on federal land, and that the interests of state and local communities are taken into account. Litigation in this area includes challenges to mining, grazing, timber harvest, operation of reservoir and dam systems providing for irrigation and hydropower, windpower development, hunting authorizations, and similar uses. Again, NEPA and the ESA often feature here, with decisions challenged as being too protective and/or not protective enough. Of particular note is the ongoing litigation concerning rights of ways and roads on federal land and claims by states and counties to ownership of those roads. While this administration is committed to address inefficiencies in federal permitting, and examining the equitable approach to state governance to federal roads, each such effort in this area will likely be litigated.

D. Protecting the Nation's Agricultural Resources and Farming Industry

Of particular note are a group of cases invoking FIFRA and the ESA which may indirectly harm the farming industry, which the President has noted as important to the Nation. Plaintiff environmental organizations have sued EPA for literally decades, claiming that EPA has violated the ESA's requirements when it registers pesticides without going through the ESA process to insure no "jeopardy." These cases have raised claims against hundreds of chemicals used in pesticides nationwide by farmers. EPA has never been able to come into compliance with the ESA requirements in any meaningful way, and as such, the pesticide registration program is completely exposed to possible injunction of pesticide use. The Division's litigation strategy over the years has avoided injunctive relief and any notable restriction of registrations. However, the possibility that pesticide use by the farming industry could be radically restricted by injunctive relief looms constantly. While the Division's attorneys have worked with EPA to improve its compliance profile, resource restrictions at EPA has made progress slow. And, with the Division's attorneys overtaxed, this is another area where insufficient resources may contribute to a bad result and very unhappy stakeholders, federal and private.

E. Protecting the Public Fisc in "Inverse Takings" Cases

There has been an unprecedented increase in litigation demands in cases brought in the Court of Federal Claims ("CFC") suing for a Fifth Amendment "taking" without just compensation. In particular, the Division was overwhelmed in 2017 with takings claims brought by flooding victims of Hurricane Harvey and other recent floods. At risk are billions of dollars in possible recovery for alleged liability incurred by the U.S. Army Corp of Engineers for its operation of flood control structures. As currently staffed, we cannot aggressively defend these cases under the expedited schedules imposed by the CFC. In the wake of Hurricane Harvey, in 2017, over 1,600 individual plaintiffs filed suit. In addition, 11 class actions were filed, potentially involving 20-50,000 plaintiffs. After extremely expedited discovery and motion practice, the first tranche of these claims has gone to trial. Other takings claims arising from floods involve other Corps operations, such as operation of flood control structures on the Missouri River. With the recent floods in the Midwest, the Division is in danger of being overwhelmed by this docket.

A glimpse at the workload hours of NRS, our largest defensive section, reveals the stress and demands being exacted. From 2014 to 2018, attorney litigation hours per FTE rose from 1,681 to 1,889, while staffing is no higher than it was in 2014. (Attorney staffing rose in 2018, but with attrition and the hiring freeze, it is now back down to 2014 levels). These very high attorney litigation hours are reflective of a major uptick in defensive case filings across the Division, from 466 new filings in 2014 to 648 in 2018. The below data reflects the increase in trial demands on NRS attorneys since the beginning of this Administration.

Dramatic Increase in Number and Length of Trials

From 2010-2016

Average number of trial days per year was 32

Average number of attorney days in trial was 81

From 2017-2019

Average number of trial days per year was 76

Average number of attorney days in trial was 244

This represents a 200% increase in average attorney trial days. In the earlier period, NRS was required to devote 81 attorney days in trial to staff the 32 trial days of various trials. Since 2017, both the average number of days in trial increased (from 32 to 76), and the average attorney trial days to staff those trials went up (from 81 to 244), reflecting the need for increased trial staffing due to the complexity and scope of the later trials.

The Division has struggled to address the situation by a variety of means, detailing attorneys from other sections, sending as much work as possible to the U.S. Attorneys' Offices, and seeking funding, as allowed, from client agencies. These short-term measures are not sustainable, and what assistance the Division has received is not reliable. Recently, the Division's request to the Department of Interior's Bureau of Reclamation for assistance was rejected, though the Division handles very high priority matters for Reclamation involving water rights, tribal claims, endangered species compliance and other litigation which is generally complex and technical. The Division needs a more sustainable operating budget.

The impact of this significant increase in workload is severe. Attrition begins to snowball, putting greater and greater demands on those who remain. It is very difficult to replace attorneys quickly, and currently the Division does not have sufficient resources to improve staffing as is necessary to provide the best, or even adequate, legal defense for the many cases handled across its defensive sections.

Justification for *Enforcing the Nation's Pollution Control Laws*

ENRD's Environmental Enforcement Section enforces over twenty pollution control and other environmental protection statutes (Justice Manual Section 5-12.100). The lion's share of EES's work arises from hazardous substance clean up laws ("CERCLA" or the "Superfund" law), the Clean Water and Clean Air Acts, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Oil Pollution Act.

EES has historically and consistently delivered outstanding results: increased compliance with law, environmental cleanup, and excellent returns for taxpayer investment. For example, EES’s civil penalty judgments secured annually range from tens of millions to well over one hundred million dollars, with occasional billion-dollar years. The annual total of the value of the injunctive relief that EES secures for installing pollution controls and performing environmental cleanups is typically the single-digit, billions of dollars, peaking periodically in double-digit billions. Similarly, the recovery of federal cleanup costs that EES secures annually ranges from tens of millions of dollars up to hundreds of millions, with an occasional peak of more than one billion dollars.

These results flow from EES’s civil enforcement docket. That docket presently consists of about: (1) 150 filed cases; (2) 275 matters referred by federal agencies for filing, but not yet filed; (3) a few dozen concluded cases that in the fullness of time have warranted further enforcement; and (4) another 400 originated matters on which EES provides advice or case development work in support of contemplated client agency actions—several dozen of which are active at any one time.¹

Despite the high returns produced for the American people, the public fisc, and the importance of the work to the Department’s mission, EES staffing for this enforcement work has declined, as detailed below:

| Type | Early 1990s | Recent Yrs. & Present | Decrease |
|---------------------|-------------|-----------------------|----------|
| Lawyers | ~160 | ~145 or less | >9% |
| Prof. Support Staff | ~95 | ~45 | >50% |

Less staffing has stalled or slowed significant amounts of enforcement work, including in the five example categories summarized below.

A. Preventing and Policing Chemical Explosions and Fires

EES currently carries 11 unfiled, referred matters seeking to enforce the chemical accident prevention provisions of the Clean Air Act in locations throughout the United States (AZ, CO, FL, IL, LA, MA, ND). The oldest of these unfiled matters was referred in mid-2015.

This type of enforcement covers many categories of industrial activities, such as refining, smelting, chemical and petrochemical manufacture, use of coolants, and chemical, fertilizer and pesticide storage and handling operations. The operations often involve large volumes of gases or liquids that are flammable, pressurized, and/or poisonous. Proof of these violations tends to

¹ Much of EES’s delayed enforcement work impacts enforcement priority areas at the principal referring agency, EPA. EPA’s National Compliance Initiatives (NCIs) announced on June 7, 2019 are to advance the Agency Strategic Plan’s objectives to improve air quality, provide for clean water, ensure chemical safety, and improve compliance with our nation’s environmental laws. NCI categories pertinent to this budget enhancement request include: reducing emissions of both volatile organic compounds and hazardous air pollutants; stopping the manufacture and sale of both hardware and software specifically designed to defeat required emissions controls on vehicles and engines; reducing the risk to human health and the environment by decreasing the likelihood of chemical accidents; and reducing the exposure of children to lead.

be fact-intensive and require expert testimony, especially for so-called general duty violations that turn on showing a breach of care in complex industrial systems.

Greater staffing and prompt enforcement of these matters will help reduce chances of industrial and commercial fires and explosions stemming from the processing, use, or handling of these hazardous but socially useful substances and will serve to mitigate the effects of fires and explosions that do occur. Vigorous enforcement action is critical in matters like EES's March 2019 action against ExxonMobil at its oil refinery in Beaumont, Texas, for its failure to take safety measures regarding the handling of extremely hazardous substances that resulted in a fire that killed two workers and injured ten others.

Similarly, in late 2018 EES and the Mississippi Department of Environmental Quality obtained a national settlement with Chevron U.S.A. Inc. that requires safety improvements at all of its petroleum refineries across the United States. Under the agreement, Chevron must spend approximately \$150 million to replace vulnerable pipes, institute operating parameters and alarms for safer operation, and improve corrosion inspections and training, as well as pay a \$2.95 million civil penalty for violations of EPA's accident prevention regulations.

B. Countering Sabotage of Pollution Control Devices Required for Motor Vehicles and Engines

EES currently carries 14 unfiled referrals alleging illegal tampering or defeat device violations regarding motor vehicles or engines. The effects of these violations are widespread, and the oldest unfiled referral in this category was received in late 2015. These violators include large manufacturers of engines and motor vehicles — both foreign and domestic, but also many mid-sized and small companies as well. The unlawful conduct results in the disabling or diminished effectiveness of pollution controls that are necessary to make the engines legal for sale in the United States.

Some of these cases are similar to the *Volkswagen* emission cheating scandal from several years ago. For example, earlier this year, EES resolved claims against Fiat Chrysler for similar conduct when the company installed sophisticated software on its “EcoDiesel” Ram 1500 and Jeep Grand Cherokee models that detected when a vehicle was being tested for compliance with emission standards. The software ensured that the vehicles' emission controls were fully activated during the testing procedure, but were disabled or rendered less effective during normal on-road driving conditions, greatly increasing the vehicles' emissions. EES required Fiat Chrysler to pay a civil penalty of \$305 million for these violations and to implement a recall program to repair more than 100,000 noncompliant diesel vehicles sold or leased in the United States.

Other, typically smaller, companies offer for sale and installation all manner of “after-market” hardware and computer software that likewise remove or impair legally required pollution controls purportedly in favor of improving engine performance. One such case was resolved last fall in a settlement with Derive Systems, Inc., which sold approximately 363,000 aftermarket products, including custom engine tuning software and parts that were designed to defeat the emissions control systems of many models of cars and trucks. Under the settlement, Derive will

spend approximately \$6.25 million to bring the company and its products into compliance with the Clean Air Act.

These cases are as technically sophisticated as any DOJ pursues; they involve electronics, computer programming, and automotive design principles and characteristics—among other technical specialties. To litigate a large case of this type can easily require 10 or 12 lawyers. And even the smallest matters typically take two people to develop and prepare for filing. Taken together, the millions of motor vehicles and miscellaneous small engines in the United States emit more pollution into the air than any other category of factory or manufacture.

C. Punishing and Curing Violations that Emit Hazardous Air Pollutants that can Cause Cancer or Similarly Serious Health Effects

EES currently carries 38 unfiled, hazardous air emission referrals involving factories located in various states around the country (e.g., CO, IL, IN, LA, MI, NJ, NY, OH, PA, PR, VA, and WY). The oldest unfiled referral was received in 2014. Hazardous air pollutants are known or suspected to cause cancer or other serious health effects, such as interference with reproduction and birth defects. These violations can arise in many industries, including manufacture of chemicals and petroleum products, chromium electroplating, and iron and steel foundries—to name just a few.

Typical of these enforcement actions is a recent Clean Air Act case against ExxonMobil that will eliminate thousands of tons of harmful air pollution from eight ExxonMobil petrochemical plants in Texas and Louisiana. The complaint alleged that ExxonMobil violated federal law by failing to properly operate and monitor industrial flares at these facilities, which resulted in a significant increase in air pollution. Under a settlement, ExxonMobil will pay a civil penalty of \$2.5 million and expend approximately \$300 million to install and operate state-of-the-art air pollution controls and monitoring technology. Once fully implemented, the pollution controls required by the settlement are expected to reduce harmful emissions of volatile organic compounds by more than 7,000 tons per year, and to reduce toxic air pollutants, including benzene, by more than 1,500 tons per year.

D. Combatting Oil Spills from Vessels, Pipelines, Tanks

EES currently has 19 unfiled referrals involving oil spills from pipelines, tanks or vessels located across much of the nation (e.g., HI, LA, MA, ND, OR, MT, TX, WA). The oldest unfiled referral dates from mid-2015. Accidents, poor maintenance, and sometimes poor design often result in the escape of various petroleum products from their intended uses or means of storage and transit. Indeed, some of the most catastrophic environmental disasters in our nation's history relate to these types of spills.

In January of this year, EES collected a \$5 million penalty from Sunoco Pipeline stemming from three crude oil spills in 2013, 2014, and 2015, in Texas, Louisiana, and Oklahoma. The Texas spill affected Russell Creek, which flows into the Neches River; the Oklahoma spill flowed into two creeks that empty into the Arkansas River; and the Louisiana spill—the largest of the three—flowed into Tete Bayou, a tributary of Caddo Lake. All three spills resulted from pipeline corrosion. Similarly, last year, Magellan Pipeline Company, an oil pipeline operator, resolved

Clean Water Act claims arising from spills in Texas, Nebraska, and Kansas by paying a \$2 million penalty and agreeing to complete \$16 million worth of injunctive relief across its 11,000-mile pipeline system.

Spills and illegal discharges can contaminate the nation's rivers, lakes, streams, shorelines, and wetlands. These incidents can cause general harm and often necessitate cleanup. They also can produce acute environmental and economic harms, such as fish kills and loss of areas devoted to commercial activities (e.g., oyster harvesting, recreation, closure of waterways that carry commercial traffic). And sometimes they create long lasting damage to natural resources. Multiple forms of relief are often sought: penalties to punish violations and deter future offenses, recovery of costs incurred by the government in cleanup work, injunctive relief to reduce risks of future mishaps, and damage awards to address restoration of lost or impaired natural resources. One such case involving multiple forms of relief occurred in a recent enforcement action against U.S. Steel which was required to: reimburse EPA and the National Park Service ("NPS") for costs they incurred responding to a 2017 spill of hexavalent chromium that flowed into Lake Michigan, pay a civil penalty, pay the National Oceanic and Atmospheric Administration for its costs in assessing natural resource damages due to the spill, and pay damages to the NPS for the closure of several beaches along the Indiana Dunes National Lakeshore.

E. Protecting Children from Exposure to Lead

Although the United States has made considerable progress in lowering children's blood lead levels as a result of a number of factors including enforcement of federal laws and regulations, such as the 1973 phase out of lead in gasoline and the 1995 ban on lead solder in food cans, our nation's children continue to be exposed to lead through multiple environmental sources. This exposure can cause irreversible and life-long health effects, including decreased IQ, ability to pay attention, and academic achievements.

To address this problem, the President's Task Force on Environmental Health Risks and Safety Risks to Children released a Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts in December 2018. As explained in a June 7, 2019 memorandum from Susan Bodine, EPA's Assistant Administrator for Enforcement and Compliance Assurance, setting forth the agency's National Compliance Initiatives, EPA is participating in this government-wide initiative. ENRD works with our agency partners, including EPA, to enforce rules designed to protect children from exposure to lead in paint, drinking water, soil, and air. The statutes under which such enforcement actions may be brought include the Toxic Substances Control Act, the Safe Drinking Water Act, CERCLA, and the Clean Air Act.

Although ENRD does not currently have a large docket of enforcement cases involving lead exposure, by FY 2021, we expect our docket to increase significantly as a result of the Federal Action Plan, EPA's renewed focus on lead as a compliance issue, and ENRD's partnering with EPA and HUD on these cases. In addition, our client agencies are in the process of strengthening their standards for what is considered dust-lead (which underpins the lead paint rules) as well as revising the drinking water regulations pertaining to lead pipes. We expect these rules to be strengthened, and for these revisions to generate new enforcement cases for the Division in the near future.

F. Other Measures Have Not Offset These Slowdowns, and More Staff Would Improve Performance Materially

ENRD has already taken a number of measures to continue to have the most effective enforcement program possible. These measures include case prioritizations, more active management of cases to foster earlier decision-making and most effective use of resources, and more collaboration with client agencies.

With the proposed increase we could, for example: (1) litigate more high-impact, Clean Air Act cases against automakers like Fiat-Chrysler or Volkswagen whose actions have wide-spread impacts on American air quality and consumers; (2) press to litigation or other conclusion dozens of our older referrals; and (3) provide the option to engage in more resource-intensive litigation, rather than settlement negotiations, in several cases each year where doing so would result in the best outcome for the United States.

3. Impact on Performance

Successful implementation of ENRD's proposed enhancement – *A Common-Sense and Effective Approach to Environmental Litigation: Defending the Administration's Environmental Rulemaking and Natural Resources Reform Agenda and Enforcing the Nation's Pollution Control Laws* – is consistent with, and supports the implementation of, DOJ Strategic Goal 4 (“Protect the Rule of Law, Integrity, and Good Government”), and Strategic Objective 4.1 (“Uphold the rule of law and integrity in the proper administration of justice”), as well as Strategic Objective 4.3 (“Pursue regulatory reform initiatives”).

Performance in the areas described above will be measured and tracked using the existing metrics described in the “Performance, Resources and Strategies” section of this Budget document. Specifically, performance will be assessed based on: (1) Percent of Civil Environmental Cases Successfully Resolved; and (2) Costs Avoided and \$ Injunctive Relief / Environmental Clean-up Awarded in Civil Environmental Cases.

This program enhancement furthers the Division's mission to ensure clean air, water and land for all Americans; prosecute criminal cases under federal pollution and wildlife laws; defend environmental and natural resources laws and federal agency programs and actions; litigate cases under statutes providing for the management of public lands and natural and cultural resources; litigate cases to protect the rights of Indians under treaties, acts of Congress, and Executive Orders, and defend the United States in claims brought by Indians; prosecute eminent domain proceedings to acquire land on behalf of the United States for authorized public purposes; conduct the Division's appellate litigation in federal circuit courts of appeals and state appellate tribunals, and assist the Office of the Solicitor General with appeals to the United States Supreme Court; and advise the Attorney General, Congress, the Office of Management and Budget, and the White House on matters of environmental and natural resources law.

4. Funding

Base Funding

| FY 2019 Enacted | | | | FY 2020 Enacted | | | | FY 2021 Current Services | | | |
|-----------------|--------------|-----|---------|-----------------|--------------|-----|---------|--------------------------|--------------|-----|---------|
| Pos | Agt/ Atty | FTE | \$(000) | Pos | Agt/ Atty | FTE | \$(000) | Pos | Agt/ Atty | FTE | \$(000) |
| 0 | 0 | 0 | \$0 | 0 | 0 | 0 | \$0 | 0 | 0 | 0 | \$0 |

Personnel Increase Cost Summary

| Type of Position/Series | Modular Cost per Position (\$000) | 1 st Year Annualization | Number of Positions Requested | FY 2021 Request (\$000) | FY 2022 Annualization (Change from 2021) (\$000) |
|-------------------------|---|---------------------------------------|-------------------------------------|-------------------------------|--|
| Attorney (905) | \$199 | \$94 | 5 | \$470 | \$435 |
| Paralegal (950) | \$104 | \$42 | 2 | \$84 | \$102 |
| Total Personnel | | | 7 | \$554 | \$537 |

Non-Personnel Increase Cost Summary

| Non-Personnel Item | Unit Cost | Quantity | FY 2021 Request (\$000) | FY 2022 Annualization (Change from 2021) (\$000) |
|---------------------------------|-----------|----------|-------------------------------|--|
| Automated Litigation Support | | | \$242 | \$0 |
| Total Non-Personnel | | | \$242 | \$0 |

Total Request for this Item

| | Pos | Atty | FTE | Personnel (\$000) | Non- Personnel (\$000) | Total (\$000) | FY 2022 Annualization (Change from 2021) (\$000) |
|--------------------|-----|------|-----|----------------------|------------------------------|------------------|--|
| Current Services | 0 | 0 | 0 | \$0 | \$0 | \$0 | \$0 |
| Increases | 7 | 5 | 4 | \$554 | \$242 | \$796 | \$537 |
| Grand Total | 7 | 5 | 4 | \$554 | \$242 | \$796 | \$537 |

Agency Rule List - Spring 2019

Environmental Protection Agency

| <u>Agency</u> | <u>Agenda Stage of Rulemaking</u> | <u>Title</u> | <u>RIN</u> |
|---------------|-----------------------------------|--|---------------------------|
| EPA/OGC | Final Rule Stage | FOIA Regulations Update, Phase I | 2016-AA02 |
| EPA/OMS | Final Rule Stage | Environmental Protection Agency Acquisition Regulation (EPAAR); Scientific Integrity | 2030-AB00 |
| EPA/OW | Final Rule Stage | Uniform National Discharge Standards for Vessels of the Armed Forces--Phase II--Batch Two (UNDS) | 2040-AE53 |
| EPA/OW | Final Rule Stage | Use of Lead Free Pipes, Fittings, Fixtures, Solder and Flux for Drinking Water | 2040-AF55 |
| EPA/OW | Final Rule Stage | Definition of "Waters of the United States" - Recodification of Preexisting Rule | 2040-AF74 |
| EPA/OW | Final Rule Stage | Revised Definition of "Waters of the United States" | 2040-AF75 |
| EPA/OW | Final Rule Stage | Technical Corrections to Ocean Dumping Regulations and Designated Ocean Disposal Sites | 2040-AF91 |
| EPA/OLEM | Final Rule Stage | Clean Water Act Hazardous Substances Spill Prevention | 2050-AG87 |
| EPA/OLEM | Final Rule Stage | Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations | 2050-AG92 |
| EPA/OLEM | Final Rule Stage | Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Reconsideration of Amendments | 2050-AG95 |
| EPA/OLEM | Final Rule Stage | Exemption for Air Emissions From Animal Waste at Farms From the Emergency Release Notification Requirements; Emergency Planning and Community Right-to-Know Act | 2050-AH00 |
| EPA/OLEM | Final Rule Stage | Facilitating Safe Management of Recalled Airbags | 2050-AH02 |
| EPA/OAR | Final Rule Stage | Revisions to the Petition Provisions of the Title V Permitting Program | 2060-AS81 |
| EPA/OAR | Final Rule Stage | Renewables Enhancement and Growth Support Rule | 2060-AS86 |
| EPA/OAR | Final Rule Stage | Revisions to Method 202: Dry Impinger Method for Determining Condensable Particulate Emissions From Stationary Sources | 2060-AS91 |
| EPA/OAR | Final Rule Stage | National Emission Standards for Hazardous Air Pollutant Emissions: Petroleum Refinery Sector | 2060-AT18 |
| EPA/OAR | Final Rule Stage | National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Reconsideration | 2060-AT25 |
| EPA/OAR | Final Rule Stage | Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration | 2060-AT54 |
| EPA/OAR | Final Rule Stage | Review of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units | 2060-AT56 |
| EPA/OAR | Final Rule Stage | Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program | 2060-AT67 |
| EPA/OAR | Final Rule Stage | National Emission Standards for Hazardous Air Pollutants for Asbestos: Notice of Request for Approval of an Alternative Work Practice for Asbestos Cement Pipe Replacement | 2060-AT73 |
| EPA/OAR | Final Rule Stage | National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production Residual Risk and Technology Review | 2060-AT74 |
| EPA/OAR | Final Rule Stage | Light-Duty Vehicle GHG Program Technical Amendments | 2060-AT75 |
| EPA/OAR | Final Rule Stage | Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program's Extension to Substitutes | 2060-AT81 |
| EPA/OAR | Final Rule Stage | Amendments to Federal Implementation Plan for Managing Air Emissions From True Minor Sources in Indian Country in Oil & Natural Gas Production and Natural Gas Processing Segments of O&NG Sector | 2060-AT96 |
| EPA/OAR | Final Rule Stage | Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified as Moderate for the 2008 Ozone NAAQS | 2060-AT97 |
| EPA/OAR | Final Rule Stage | NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units--Reconsideration of Supplemental Cost Finding and Residual Risk and Technology Review | 2060-AT99 |
| EPA/OAR | Final Rule Stage | Standards of Performance for New Residential Wood Heaters and New Residential Hydronic Heaters and Forced-Air Furnaces Amendments. | 2060-AU00 |
| EPA/OAR | Final Rule Stage | The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks | 2060-AU09 |
| EPA/OAR | Final Rule Stage | Adopting Subpart Ba Requirements in Emission Guidelines for Municipal Solid Waste Landfills | 2060-AU33 |
| EPA/OAR | Final Rule Stage | Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations | 2060-AU34 |
| EPA/OAR | Final Rule Stage | NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units--Review of Acid Gas Standards for Certain Existing Eastern Bituminous Coal Refuse-Fired Units | 2060-AU48 |
| EPA/OCSP | Final Rule Stage | Review of Dust-Lead Hazard Standards and the Definition of Lead-Based Paint | 2070-AJ82 |
| EPA/OCSP | Final Rule Stage | Significant New Use Rule for Toluene Diisocyanates (TDI) and Related Compounds | 2070-AJ91 |
| EPA/OCSP | Final Rule Stage | Significant New Uses of Chemical Substances; Updates to the Hazard Communication Program and Regulatory Framework; Minor Amendments to Reporting Requirements for Premanufacture Notices | 2070-AJ94 |
| EPA/OCSP | Final Rule Stage | Pesticides; Technical Amendment to Data Requirements for Antimicrobial Pesticides | 2070-AK41 |
| EPA/OCSP | Final Rule Stage | Technical Issues; Formaldehyde Emission Standards for Composite Wood Products | 2070-AK47 |
| EPA/ORD | Final Rule Stage | Harmonize 40 CFR Part 26 Subparts C, D, and K with Subpart A (the Common Rule) | 2080-AA13 |
| EPA/ORD | Final Rule Stage | Strengthening Transparency in Regulatory Science | 2080-AA14 |
| EPA/RODENVER | Proposed Rule Stage | Federal Implementation Plan for Oil and Natural Gas Sources; Uintah and Ouray Indian Reservation in Utah | 2008-AA03 |
| EPA/OEI | Proposed Rule Stage | Environmental Protection Agency Freedom of Information Act Regulations Update, Phase II | 2025-AA38 |

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| EPA/OEI | Proposed Rule Stage | Revisions to the EPA's Privacy Act Regulations for Systems of Records Notices | 2025-AA43 |
| EPA/OW | Proposed Rule Stage | National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions | 2040-AF15 |
| EPA/OW | Proposed Rule Stage | National Primary Drinking Water Regulations: Regulation of Perchlorate | 2040-AF28 |
| EPA/OW | Proposed Rule Stage | Federal Aluminum Aquatic Life Criteria Applicable to Oregon | 2040-AF70 |
| EPA/OW | Proposed Rule Stage | Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category | 2040-AF77 |
| EPA/OW | Proposed Rule Stage | Updates to eReporting Rule Data Elements to Reflect MS4 General Permit Remand Rule | 2040-AF78 |
| EPA/OW | Proposed Rule Stage | Peak Flows Management | 2040-AF81 |
| EPA/OW | Proposed Rule Stage | Clean Water Act 404 Assumption Update Regulation | 2040-AF83 |
| EPA/OW | Proposed Rule Stage | Clean Water Act Methods Update Rule for the Analysis of Effluent | 2040-AF84 |
| EPA/OW | Proposed Rule Stage | Clarification of State Certification Procedures Under Section 401 of the Clean Water Act | 2040-AF86 |
| EPA/OW | Proposed Rule Stage | Clean Water Act Section 404(c) Regulatory Revision | 2040-AF88 |
| EPA/OW | Proposed Rule Stage | Compensatory Mitigation for Losses of Aquatic Resources—Review and Approval of Mitigation Banks and In-Lieu Fee Programs | 2040-AF90 |
| EPA/OW | Proposed Rule Stage | Vessel Incidental Discharge Act of 2018—Development of National Performance Standards for Marine Pollution Control Devices for Discharges Incidental to the Normal Operation of Commercial Vessels. | 2040-AF92 |
| EPA/OW | Proposed Rule Stage | Withdrawal of Certain Federal Water Quality Criteria Applicable to Washington | 2040-AF94 |
| EPA/OLEM | Proposed Rule Stage | Modernizing Ignitable Liquids Determinations | 2050-AG93 |
| EPA/OLEM | Proposed Rule Stage | Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residues From Electric Utilities: Amendments to the National Minimum Criteria (Phase 2) | 2050-AG98 |
| EPA/OLEM | Proposed Rule Stage | Financial Responsibility Requirements Under CERCLA Section 108(b) for the Electric Power Generation, Transmission, and Distribution Industry | 2050-AH03 |
| EPA/OLEM | Proposed Rule Stage | Financial Responsibility Requirements Under CERCLA Section 108(b) for the Chemical Manufacturing Industry | 2050-AH05 |
| EPA/OLEM | Proposed Rule Stage | Financial Responsibility Requirements Under CERCLA Section 108(b) for the Petroleum and Coal Products Manufacturing Industry | 2050-AH06 |
| EPA/OLEM | Proposed Rule Stage | Federal Coal Combustion Residuals Permitting Program | 2050-AH07 |
| EPA/OLEM | Proposed Rule Stage | Rulemaking for Alternate Extraction Methods for PCBs | 2050-AH08 |
| EPA/OLEM | Proposed Rule Stage | Listing Per- and Polyfluoroalkyl Substances (PFAS) as a CERCLA Hazardous Substance | 2050-AH09 |
| EPA/OLEM | Proposed Rule Stage | Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Revision of Cease Receipt of Waste Deadline for CCR Surface Impoundments; Response to Court | 2050-AH10 |
| EPA/OLEM | Proposed Rule Stage | Hazardous and Solid Waste Management System: Disposal of CCR; Alternative Demonstration for Unlined Surface Impoundments/ Request for Comment on Legacy Units; Response to Court Part B | 2050-AH11 |
| EPA/OAR | Proposed Rule Stage | Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act | 2050-AM75 |
| EPA/OAR | Proposed Rule Stage | Plywood and Composite Wood Products (PCWP) Residual Risk and Technology Review and Amendments | 2050-AO66 |
| EPA/OAR | Proposed Rule Stage | Protection of the Stratospheric Ozone: Motor Vehicle Air Conditioning System Servicing | 2050-AO75 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Polyvinyl Chloride and Copolymers Reconsideration | 2050-AR73 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants Risk and Technology Review Reconsideration: Oil and Natural Gas Sector | 2050-AS13 |
| EPA/OAR | Proposed Rule Stage | Review of the National Ambient Air Quality Standards for Particulate Matter | 2050-AS50 |
| EPA/OAR | Proposed Rule Stage | General Revisions to Emissions Monitoring and Reporting Requirements for Fossil Fuel-Fired Electric Generating Units | 2050-AS74 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbine Residual Risk and Technology Review | 2050-AT00 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands Residual Risk and Technology Review | 2050-AT01 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology Standards Residual Risk and Technology Review for Ethylene Production | 2050-AT02 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities | 2050-AT03 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Residual Risk and Technology Review | 2050-AT05 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing Risk and Technology Review | 2050-AT07 |
| EPA/OAR | Proposed Rule Stage | Lime Manufacturing Risk and Technology Review | 2050-AT08 |
| EPA/OAR | Proposed Rule Stage | National Emission Standard for Hazardous Air Pollutants: Boat Manufacturing and Reinforced Plastic Composites Production Residual Risk and Technology Review | 2050-AT12 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutant Emissions: Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks | 2050-AT20 |
| EPA/OAR | Proposed Rule Stage | Vehicle Test Procedure Adjustments for Tier 3 Test Fuel | 2050-AT21 |
| EPA/OAR | Proposed Rule Stage | Control of Air Pollution From Aircraft and Aircraft Engines: Proposed GHG Emissions Standards and Test Procedures | 2050-AT26 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries | 2050-AT30 |
| EPA/OAR | Proposed Rule Stage | Fuels Regulatory Streamlining | 2050-AT31 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing Residual Risk and Technology Review | 2050-AT34 |
| EPA/OAR | Proposed Rule Stage | NESHAP: Surface Coating of Automobiles and Light-Duty Trucks, Plastic Parts, and Miscellaneous Metal Parts Residual Risk and Technology Review | 2050-AT49 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans and Surface Coating of Metal Coil Residual Risk and Technology Review | 2050-AT51 |
| EPA/OAR | Proposed Rule Stage | Supplemental Notice of Potential Withdrawal of the Control Techniques Guidelines for the Oil and Natural Gas Industry | 2050-AT76 |
| EPA/OAR | Proposed Rule Stage | Protection of Stratospheric Ozone: Listing of Substitutes Under the Significant New Alternatives Policy Program | 2050-AT78 |
| EPA/OAR | Proposed Rule Stage | | 2050-AT80 |

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| | | Revisions to Appendix P to 40 CFR Part 51, Concerning Minimum Emission Reporting Requirements in SIPs | |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing Residual Risk and Technology Review | 2060-AT85 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) Residual Risk and Technology Review | 2060-AT86 |
| EPA/OAR | Proposed Rule Stage | Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Project Emissions Accounting | 2060-AT89 |
| EPA/OAR | Proposed Rule Stage | Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review | 2060-AT90 |
| EPA/OAR | Proposed Rule Stage | Protection of Visibility: Amendments to Requirements for State Plans | 2060-AU01 |
| EPA/OAR | Proposed Rule Stage | Treatment of Biogenic CO2 Emissions Under the Clean Air Act Permitting Programs | 2060-AU03 |
| EPA/OAR | Proposed Rule Stage | Response to the Section 126(b) Petition From New York | 2060-AU04 |
| EPA/OAR | Proposed Rule Stage | Standards of Performance for New Residential Wood Heaters and New Residential Hydronic Heaters and Forced-Air Furnaces | 2060-AU07 |
| EPA/OAR | Proposed Rule Stage | General National Ambient Air Quality Standards Implementation Update Rule | 2060-AU10 |
| EPA/OAR | Proposed Rule Stage | Protection of Stratospheric Ozone: Updates to the Significant New Alternatives Policy Program | 2060-AU11 |
| EPA/OAR | Proposed Rule Stage | Revisit Area Designation for 2010 1-hour SO2 NAAQS for Williamson County, Illinois | 2060-AU14 |
| EPA/OAR | Proposed Rule Stage | Revisit Area Designation for 2010 1-Hour SO2 NAAQS in Freestone and Anderson Counties, Rusk and Panola Counties, and Titus County in Texas | 2060-AU15 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing Residual Risk and Technology Review | 2060-AU16 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production Residual Risk and Technology Review | 2060-AU17 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review | 2060-AU18 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Site Remediation Residual Risk and Technology Review | 2060-AU19 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters Amendments | 2060-AU20 |
| EPA/OAR | Proposed Rule Stage | Mercury and Air Toxics Standards for Power Plants Technical Corrections, Electronic Reporting Revisions, and Clarifications | 2060-AU21 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coatings Residual Risk and Technology Review | 2060-AU22 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants (NESHAP) for Cellulose Products Manufacturing | 2060-AU23 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Petition to Amend Phosphoric Acid Mercury Limit | 2060-AU25 |
| EPA/OAR | Proposed Rule Stage | Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production and Import, 2020-2030, and Other Updates | 2060-AU26 |
| EPA/OAR | Proposed Rule Stage | Standards of Performance for Stationary Compression Ignition (CI) Internal Combustion Engines Amendments | 2060-AU27 |
| EPA/OAR | Proposed Rule Stage | Renewable Fuel Standard Program: Modification of Statutory Volume Targets | 2060-AU28 |
| EPA/OAR | Proposed Rule Stage | Amendments Related to Marine Diesel Engine Emission Standards | 2060-AU30 |
| EPA/OAR | Proposed Rule Stage | Technical Revisions to the Greenhouse Gas Reporting Rule | 2060-AU35 |
| EPA/OAR | Proposed Rule Stage | Response to CAA Section 176A(a)(2) Petition From the State of Maine | 2060-AU36 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Sterilizers Technology Review | 2060-AU37 |
| EPA/OAR | Proposed Rule Stage | Extension of Photochemical Assessment Monitoring Stations Compliance Deadline | 2060-AU38 |
| EPA/OAR | Proposed Rule Stage | Revisions to Test Methods and Performance Specifications for Air Emission Sources | 2060-AU39 |
| EPA/OAR | Proposed Rule Stage | Review of the Primary National Ambient Air Quality Standards for Ozone | 2060-AU40 |
| EPA/OAR | Proposed Rule Stage | Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine Standards | 2060-AU41 |
| EPA/OAR | Proposed Rule Stage | Renewable Fuel Standard Program: Standards for 2020, Biomass-Based Diesel Volumes for 2021, and Other Changes | 2060-AU42 |
| EPA/OAR | Proposed Rule Stage | Relaxation of the Federal Reid Vapor Pressure (RVP) Gasoline Volatility Standard for the Atlanta Area | 2060-AU43 |
| EPA/OAR | Proposed Rule Stage | Review of New Sources and Modifications in Indian Country: Amendments to Federal Implementation Plan; Managing Air Emissions from New and Modified True Minor Sources in Oil and Natural Gas Production | 2060-AU45 |
| EPA/OAR | Proposed Rule Stage | Error Corrections to New Source Review Regulations | 2060-AU46 |
| EPA/OAR | Proposed Rule Stage | National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing | 2060-AU47 |
| EPA/OAR | Proposed Rule Stage | General Provisions Amendments to 40 CFR Part 62: Incorporation by Reference of State Plans | 2060-AU49 |
| EPA/OAR | Proposed Rule Stage | On-Highway Heavy-Duty Trailers: Review of Standards and Requirements | 2060-AU50 |
| EPA/OAR | Proposed Rule Stage | Clean Air Act Benefit-Cost Reforms | 2060-AU51 |
| EPA/OCBPP | Proposed Rule Stage | Pesticides; Expansion of Crop Grouping Program | 2070-AJ28 |
| EPA/OCBPP | Proposed Rule Stage | Pesticide Product Performance Data Requirements for Products Claiming Efficacy Against Invertebrate Pests | 2070-AJ49 |
| EPA/OCBPP | Proposed Rule Stage | Microorganisms: General Exemptions From Reporting Requirements; Revisions of Recipient Organisms Eligible for Tier I and Tier II Exemptions | 2070-AJ55 |
| EPA/OCBPP | Proposed Rule Stage | Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances; Significant New Use Rule | 2070-AJ69 |
| EPA/OCBPP | Proposed Rule Stage | Pesticides; Technical Amendments to the Data Requirements | 2070-AK00 |
| EPA/OCBPP | Proposed Rule Stage | Pesticides; Procedural Rule Amendment; Requirement for Certain Pesticide Actions to Publish Notices in the Federal Register | 2070-AK05 |
| EPA/OCBPP | Proposed Rule Stage | Pesticides; Administrative Corrections and Removal of Obsolete Information | 2070-AK13 |
| EPA/OCBPP | Proposed Rule Stage | Procedures for Review of CBI Claims for the Identity of Chemicals on the TSCA Inventory | 2070-AK21 |
| EPA/OCBPP | Proposed Rule Stage | Restoration of Inadvertently-Removed Exemption From the Requirements of FIFRA | 2070-AK25 |
| EPA/OCBPP | Proposed Rule Stage | | 2070-AK26 |

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| | | Toxic Release Inventory (TRI); Response to Petition From the Toxics Use Reduction Institute (TURI) to Add 25 Chemicals | |
| EPA/OC8PP | Proposed Rule Stage | TSCA Chemical Data Reporting Revisions Under TSCA Section 8(a) | 2070-AK33 |
| EPA/OC8PP | Proposed Rule Stage | Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h) | 2070-AK34 |
| EPA/OC8PP | Proposed Rule Stage | Parent Company Definition for Toxics Release Inventory (TRI) Reporting | 2070-AK42 |
| EPA/OC8PP | Proposed Rule Stage | Pesticides; Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements | 2070-AK49 |
| EPA/OC8PP | Proposed Rule Stage | Community Right-to-Know; Corrections to Toxics Release Inventory (TRI) Reporting Requirements | 2070-AK53 |
| EPA/OW | Prerule Stage | Regulatory Determinations for Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFAS) | 2060-AF93 |
| EPA/OLEM | Prerule Stage | Municipal Solid Waste Landfill Liquids Management Regulations Under RCRA Subtitle D | 2050-AG86 |
| EPA/OAR | Prerule Stage | Section 610 Review of Renewable Fuels Standard Program | 2050-AJ44 |
| EPA/OC8PP | Prerule Stage | Methylene Chloride; Commercial Paint and Coating Removal Training, Certification and Limited Access Program | 2070-AJ48 |
| EPA/OC8PP | Prerule Stage | Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS) to the Toxics Release Inventory | 2070-AK51 |

Executive Orders (E.O.) & Presidential Memoranda (P.M.)

| Title | Date | Environ. Issues | Energy | Reg. Reform |
|--|---------------|--------------------|--------|----------------|
| 2017 | | | | |
| Memorandum for the Heads of Executive Departments and Agencies (Regulatory Freeze Pending Review, through Ronald Priebus) | Jan. 20, 2017 | | | X |
| E.O. 13766. Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects | Jan. 24, 2017 | X | | X |
| P.M. Construction of the Keystone XL Pipeline | Jan. 24, 2017 | X | X | |
| P.M. Construction of the Dakota Access Pipeline | Jan. 24, 2017 | X | X | |
| P.M. Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing | Jan. 24, 2017 | | | X |
| E.O. 13767. Border Security and Immigration Enforcement Improvements | Jan. 25, 2017 | X | | |
| E.O. 13771. Reducing Regulation and Controlling Regulatory Costs | Jan. 30, 2017 | | | X |
| E.O. 13773. Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking | Feb. 9, 2017 | X | | |
| E.O. 13774. Preventing Violence Against Federal, State, Tribal, and Local Law Enforcement Officers | Feb. 9, 2017 | X | | |
| E.O. 13777. Enforcing the Regulatory Reform Agenda | Feb. 24, 2017 | | | X |
| E.O. 13778. Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule | Feb. 28, 2017 | X | | X |
| E.O. 13781. Comprehensive Plan for Reorganizing the Executive Branch | Mar. 13, 2017 | X | | |
| E.O. 13783. Promoting Energy Independence and Economic Growth | Mar. 28, 2017 | X | X | X |
| E.O. 13785. Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws | Mar. 31, 2017 | X | | |
| E.O. 13786. Omnibus Report on Significant Trade Deficits | Mar. 31, 2017 | X | | |
| E.O. 13787. Providing an Order of Succession Within the Department of Justice | Mar. 31, 2017 | X | | |

| Title | Date | Environ. Issues | Energy | Reg. Reform |
|--|----------------|--------------------|--------|----------------|
| E.O. 13790. Promoting Agriculture and Rural Prosperity in America | Apr. 25, 2017 | | | X |
| E.O. 13792. Review of Designations Under the Antiquities Act | Apr. 26, 2017 | X | | |
| E.O. 13794. Establishment of the American Technology Council | Apr. 28, 2017 | X | | |
| E.O. 13795. Implementing an America-First Offshore Energy Strategy | Apr. 28, 2017 | X | X | X |
| E.O. 13796. Addressing Trade Agreement Violations and Abuses | Apr. 29, 2017 | X | | |
| E.O. 13797. Establishment of Office of Trade and Manufacturing Policy | Apr. 29, 2017 | X | | |
| E.O. 13805. Establishing a Presidential Advisory Council on Infrastructure | July 19, 2017 | | | X |
| E.O. 13807. Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects | Aug. 15, 2017 | X | | X |
| E.O. 13811. Continuance of Certain Federal Advisory Committees | Sept. 29, 2017 | X | | |
| Proclamation 9681. Modifying the Bears Ears National Monument | Dec. 4, 2017 | X | | |
| Proclamation 9682. Modifying the Grand Staircase-Escalante National Monument | Dec. 4, 2017 | X | | |
| E.O. 13817. A Federal Strategy To Ensure Secure and Reliable Supplies of Critical Minerals | Dec. 20, 2017 | X | X | X |
| 2018 | | | | |
| E.O. 13821. Streamlining and Expediting Requests To Locate Broadband Facilities in Rural America | Jan. 8, 2018 | | | X |
| P.M. Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed by the Department of the Interior | Jan. 8, 2018 | X | | |
| P.M. Promoting Domestic Manufacturing and Job Creation—Policies and Procedures Relating to Implementation of Air Quality Standards | Apr. 12, 2018 | X | | X |
| E.O. 13834. Efficient Federal Operations | May 17, 2018 | X | | X |
| E.O. 13840. Ocean Policy To Advance the Economic, Security, and Environmental Interests of the United States | June 19, 2018 | X | | X |

| Title | Date | Environ. Issues | Energy | Reg. Reform |
|---|---------------|-----------------|--------|-------------|
| P.M. Promoting the Reliable Supply and Delivery of Water in the West | Oct. 19, 2018 | X | | X |
| P.M. Developing a Sustainable Spectrum Strategy for America's Future | Oct. 25, 2018 | | | X |
| E.O. 13853. Establishing the White House Opportunity and Revitalization Council | Dec. 12, 2018 | | | X |
| E.O. 13855. Promoting Active Management of America's Forests, Rangelands, and Other Federal Lands To Improve Conditions and Reduce Wildfire Risk | Dec. 21, 2018 | X | | X |
| 2019 | | | | |
| Presidential Proclamation 9842. Addressing Mass Migration Through the Southern Border of the United States | Feb. 7, 2019 | X | | |
| Presidential Proclamation 9844. Declaring a National Emergency Concerning the Southern Border of the United States | Feb. 15, 2019 | X | | |
| E.O. 13867. Issuance of Permits With Respect to Facilities and Land Transportation Crossings at the International Boundaries of the United States | Apr. 10, 2019 | X | X | |
| E.O. 13868. Promoting Energy Infrastructure and Economic Growth | Apr. 10, 2019 | X | X | X |
| Presidential Proclamation 9880. Addressing Mass Migration Through the Southern Border of the United States (not yet in binder) | May 8, 2019 | X | | |

Presidential Permits

| Title | Date | Notes |
|---|---------------|---------|
| TransCanada Keystone Pipeline, L.P. (signed by Under Secretary of State of Political Affairs) | Mar. 23, 2017 | revoked |
| TransCanada Keystone Pipeline, L.P. (Presidential Memorandum) | Mar. 29, 2019 | - |

VII. Program Offsets

ENRD does not submit any Fiscal Year 2021 Program Offsets.

VII. Exhibits