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of emissions from all types of stationary and mobile sources. These cases also frequently raise significant administrative law issues, so EDS attorneys have been active participants in the development of modern jurisprudential principles in areas such as standing, *Chevron* deference, and the scope of judicial review of agency actions.

Evolution of the Federal Superfund Cleanup Law

EDS attorneys have also played an important role in the evolution of the federal Superfund cleanup law, CERCLA (the Comprehensive Environmental Response, Compensation, and Liability Act). In the early 1980s, shortly after CERCLA was enacted, EDS played a large role in defending the statute against a torrent of broad-based challenges to its constitutionality and fairness. In fact, Congress ratified many of the results obtained in these cases when it adopted the Superfund Amendments and Reauthorization Act (or "SARA") in 1986. These judicial decisions and legislative action -- very controversial at the time -- created the fundamental cleanup and cost recovery mechanisms that are so familiar to, and effectively used by, EPA and the regulated community today.

As the program has matured, it has also spawned new legal questions -- such as the contribution issues addressed by the Supreme Court in *Cooper Industries v. Aviall Services* (2004) and *Atlantic Research Corp. v. United States* (2007), and in liability issues such as those addressed by the Court in its recent decision in *Burlington Northern v. United States* (2009). The Environmental Defense Section frequently handles cases raising these sorts of issues in the lower courts when it defends federal agencies alleged to have contributed to hazardous waste sites. EDS also has played, and continues to play, a very important role in the development of natural resource damages (NRD) law under CERCLA, as it pertains to state NRD claims against federal agencies.

Other Defensive Environmental Litigation

Today, the Environmental Defense Section participates in a broad spectrum of environmental litigation, including:

1. defending client agency programs and initiatives;
2. enforcing the wetlands protection provisions of the Clean Water Act and the Rivers and Harbors Act;
3. resolving federal agency liability equitably in cases under CERCLA; and
4. representing the United States as a defendant or respondent in cases brought under various pollution control statutes, including the CAA, CWA, Safe Drinking Water Act, Toxic Substances Control Act, and RCRA.

Defending agency programs and initiatives represents the largest segment of the Section's practice. These include regulatory actions by the EPA and U.S. Army Corps of Engineers (Corps). In these cases, EDS defends rulemakings that represent the culmination of years of agency effort and significant investment of agency resources. Other components of this practice include defending federal agencies' implementation of their statutory and regulatory mandates through defense of challenges to permit decisions, administrative orders and civil penalty claims. This litigation occurs in the district courts and in original actions in the courts of appeals throughout the country.

Enforcing the wetlands laws under section 404 of the Clean Water Act and Sections 10 and 13 of the Rivers and Harbors Act constitutes approximately 10 percent of EDS's docket. These cases play a critical role in protecting the Nation's wetlands and navigable waterways from illegal and harmful development and in preserving important ecosystems. EDS also brings civil enforcement actions for the unauthorized placement of obstructions in navigable waters and the impairment of the reach, flow, or capacity of those waters under section 10 of the Rivers and Harbors Act of 1899.

Federal agency CERCLA liability cases constitute over a third of the Section's practice. In this ever-expanding area of the docket, the Section works to fairly resolve federal agency liability, thereby protecting the federal fisc against excessive claims while ensuring that the government pays its "fair share" of environmental cleanup costs.

Lastly, EDS handles novel, high-profile cases brought by states or environmental groups, alleging that **federal agencies have violated requirements of the environmental laws**, which typically apply to the federal government in the same manner, and to the same extent, as they apply to private parties. In addition, EDS handles a number of bankruptcy proceedings and state law actions. These areas of the docket comprise about 10 percent of the Section's workload.

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