

Why GAO Did This Study

The Environmental Protection Agency (EPA) faces numerous legal challenges as it implements the nation's environmental laws. Several statutes, such as the Clean Air and Clean Water Acts, allow citizens to file suit against EPA to challenge certain agency actions. Where EPA is named as a defendant, the Department of Justice provides EPA's legal defense. If successful, plaintiffs may be paid for certain attorney fees and costs. Payments are made from the Department of the Treasury's Judgment Fund—a permanent fund available to pay judgments against the government, as well as settlements resulting from lawsuits—or EPA's appropriations. For this review, GAO was asked to examine (1) the trends in and factors affecting environmental litigation for fiscal years 1995 through 2010 and (2) Justice's recent costs and recent plaintiff payments from the Judgment Fund and EPA.

To conduct this review, GAO obtained and analyzed data from two Justice databases on cases filed under 10 key environmental statutes. To gain stakeholder views on any trends and factors that might affect them, GAO interviewed representatives of environmental and industry groups, state attorneys general, and other experts. GAO estimated the costs of litigation handled by Justice attorneys and payments made for attorney fees and court costs from the Judgment Fund and EPA funds.

GAO is making no recommendations in this report. GAO provided a draft of this report to the agencies for comment. Justice and Treasury had technical comments, which were incorporated, while EPA had no comments.

To view the full product, including the scope and methodology, click on [GAO-11-650](#). For more information, contact David C. Trimble at (202) 512-3841 or trimbled@gao.gov.

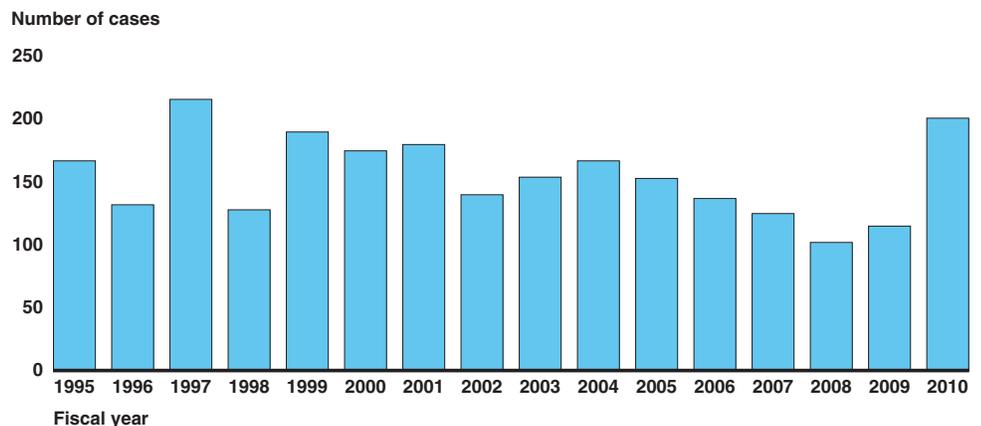
ENVIRONMENTAL LITIGATION

Cases against EPA and Associated Costs over Time

What GAO Found

No trend was discernible in the number of environmental cases brought against EPA from fiscal year 1995 through fiscal year 2010, as the number of cases filed in federal court varied over time. Justice staff defended EPA on an average of about 155 such cases each year, or a total of about 2,500 cases between fiscal years 1995 and 2010. Most cases were filed under the Clean Air Act (59 percent of cases) and the Clean Water Act (20 percent of cases). According to stakeholders GAO interviewed, a number of factors—particularly a change in presidential administration, new regulations or amendments to laws, or EPA's not meeting statutorily required deadlines—affect environmental litigation.

Environmental Litigation Cases Filed against EPA, Fiscal Year 1995 through Fiscal Year 2010



Source: GAO analysis of Justice data.

The costs borne by Justice, EPA, and Treasury also varied without a discernible trend from fiscal year 1998 through fiscal year 2010. Justice spent at least \$43 million, or \$3.3 million annually, to defend EPA in court during this time. In addition, owing to statutory requirements to pay certain successful plaintiffs for attorney fees and costs, Treasury paid about \$14.2 million from fiscal year 2003 through fiscal year 2010—about \$1.8 million per fiscal year—to plaintiffs in environmental cases. EPA paid approximately \$1.4 million from fiscal year 2006 through fiscal year 2010—about \$280,000 per fiscal year—to plaintiffs for environmental litigation claims under relevant statutes. (All amounts are given in constant 2010 dollars.) Justice officials said that they negotiate payments with the successful plaintiffs, who generally receive less than originally requested. Complicating efforts to analyze trends in cases and costs is that Justice maintains data on environmental cases in two separate data systems and does not have a standard approach for maintaining the data. As a result, it is difficult to identify and summarize the full set of cases and costs managed by Justice. Nonetheless, using an iterative electronic and manual process, GAO was able to merge the two sets of data for its purposes. Justice officials said that they do not need to change their approach to managing the data, however, because they do not use it to summarize case data agencywide. Moreover, the officials said they lack resources to adapt their aging systems to accept additional data.