



Highlights of [GAO-05-658](#), a report to congressional requesters

## Why GAO Did This Study

The burden of cleaning up Superfund and other hazardous waste sites is increasingly shifting to taxpayers, particularly since businesses handling hazardous substances are no longer taxed under Superfund and the backlog of sites needing cleanup is growing. While key environmental laws rely on the “polluter pays” principle, the extent to which liable parties cease operations or restructure—such as through bankruptcy—can directly affect the cleanup costs faced by taxpayers. GAO was asked to (1) determine how many businesses with liability under federal law for environmental cleanups have declared bankruptcy, and how many such cases the government has pursued in bankruptcy court; (2) identify challenges the Environmental Protection Agency (EPA) faces in holding bankrupt and other financially distressed businesses responsible for their cleanup obligations; and (3) identify actions EPA could take to better ensure that such businesses pay for their cleanups.

## What GAO Recommends

GAO’s nine recommendations include EPA’s (1) implementing a financial assurance mandate for businesses handling hazardous substances and (2) enhancing its oversight and enforcement of existing financial assurances and authorities. EPA generally agreed with many of the recommendations, stating its intent to further evaluate some of them.

[www.gao.gov/cgi-bin/getrpt?GAO-05-658](http://www.gao.gov/cgi-bin/getrpt?GAO-05-658).

To view the full product, including the scope and methodology, click on the link above. For more information, contact John B. Stephenson at (202) 512-3841 or [stephensonj@gao.gov](mailto:stephensonj@gao.gov).

# ENVIRONMENTAL LIABILITIES

## EPA Should Do More to Ensure That Liable Parties Meet Their Cleanup Obligations

### What GAO Found

While more than 231,000 businesses operating in the United States filed for bankruptcy in fiscal years 1998 through 2003, the extent to which these businesses had environmental liabilities is not known because neither the federal government nor other sources collect this information. Information on bankrupt businesses with federal environmental liabilities is limited to data on the bankruptcy cases that the Justice Department has pursued in court on behalf of EPA. In that regard, the Justice Department initiated 136 such cases from 1998 through 2003.

In seeking to hold liable businesses responsible for their environmental cleanup obligations, EPA faces significant challenges that often stem from the differing goals of environmental laws that hold polluting businesses liable for cleanup costs and other laws that, in some cases, allow businesses to limit or avoid responsibility for these liabilities. For example, businesses can legally organize or restructure in ways that can limit their future expenditures for cleanups by, for example, separating their assets from their liabilities using subsidiaries. While many such actions are legal, transferring assets to limit liability may violate federal law in some cases. However, such cases are difficult for EPA to identify and for the Justice Department to prosecute successfully. In addition, bankruptcy law presents a number of challenges to EPA’s ability to hold parties responsible for their cleanup obligations, challenges that are largely related to the law’s intent to give debtors a fresh start. Moreover, by the time a business files for bankruptcy, it may have few, if any, assets remaining to distribute among creditors. The bankruptcy process also poses procedural and informational challenges for EPA. For example, EPA lacks timely, complete, and reliable information on the thousands of businesses filing for bankruptcy each year.

Notwithstanding these challenges, EPA could better ensure that bankrupt and other financially distressed businesses meet their cleanup obligations by making greater use of existing authorities. For example, EPA has not implemented a 1980 statutory mandate under Superfund to require businesses handling hazardous substances to demonstrate their ability to pay for potential environmental cleanups—that is, to provide financial assurances. EPA has cited competing priorities and lack of funds as reasons for not implementing this mandate, but its inaction has exposed the Superfund program and U.S. taxpayers to potentially enormous cleanup costs at gold, lead, and other mining sites and at other industrial operations, such as metal-plating businesses. Also, EPA has done little to ensure that businesses comply with its existing financial assurance requirements in cleanup agreements and orders. Greater oversight and enforcement of financial assurances would better guarantee that cleanup funds will be available if needed. Also, greater use of other existing authorities—such as tax offsets, which allow the government to redirect tax refunds it owes businesses to agencies with claims against them—could produce additional payments for cleanups from financially distressed businesses.