

August 2011

# ENVIRONMENTAL LITIGATION

## Cases against EPA and Associated Costs over Time

U.S. Government Accountability Office



YEARS

1921-2011

ACCOUNTABILITY ★ INTEGRITY ★ RELIABILITY

## 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](mailto:trimbled@gao.gov).

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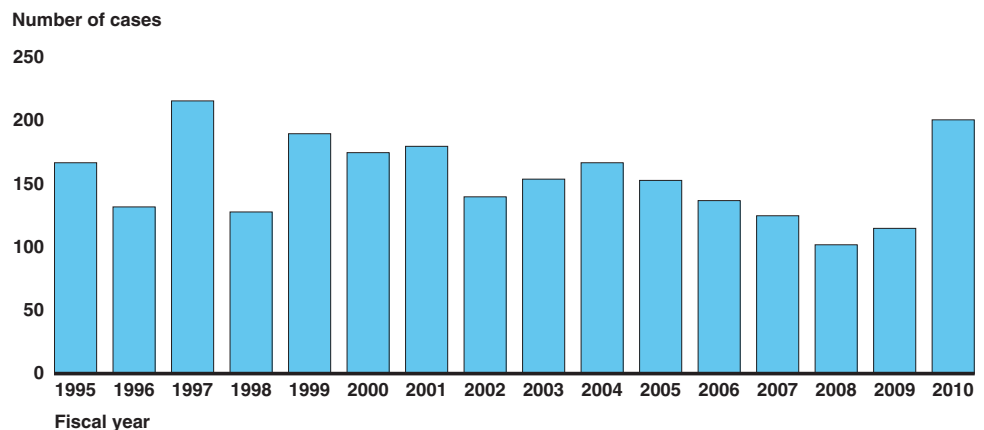
## ENVIRONMENTAL LITIGATION

### 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.

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# Contents

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Letter		1
	Background	5
	The Number of Environmental Litigation Cases against EPA Showed No Discernible Trend over 16 Years, and Stakeholders Stated That Various Factors Affected Yearly Numbers	13
	Available Data Indicate That Costs Associated with Environmental Litigation against EPA, including Payments to Plaintiffs, Have Varied over the Past 10 Years with No Discernible Trend	19
	Agency Comments and Our Evaluation	26
Appendix I	Objectives, Scope, and Methodology	28
Appendix II	Key Provisions and Historical Reporting under the Equal Access to Justice Act	35
Appendix III	Department of the Treasury and Environmental Protection Agency Payments	40
Appendix IV	GAO Contact and Staff Acknowledgments	50
Tables		
	Table 1: Selected Environmental Laws	6
	Table 2: Share of Cases by Lead Plaintiff Type: Fiscal Year 1995 through Fiscal Year 2010	17
	Table 3: Categories of Plaintiffs	30
	Table 4: Stakeholders We Interviewed	32
	Table 5: Key Attributes of Attorney Fee Payment Provisions Relevant to Judicial Proceedings	38
	Table 6: Treasury’s Judgment Fund Payments, Fiscal Year 2003 through Fiscal Year 2010	40
	Table 7: EPA’s Equal Access to Justice Act Payments, Fiscal Year 2006 through Fiscal Year 2010	48

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## Figures

Figure 1: Environmental Cases Filed against EPA, Fiscal Year 1995 through Fiscal Year 2010	14
Figure 2: Environmental Cases Filed against EPA by Statute, Fiscal Year 1995 through Fiscal Year 2010	16
Figure 3: Estimated Environment and Natural Resources Division Attorney Costs for EPA Defensive Cases, Fiscal Year 1998 through Fiscal Year 2010	20
Figure 4: Treasury's Judgment Fund Payments, Fiscal Year 2003 through Fiscal Year 2010	24
Figure 5: Amount Paid by EPA under EAJA for Environmental Cases, Fiscal Year 2006 through Fiscal Year 2010	26

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## Abbreviations

EAJA	Equal Access to Justice Act
EPA	Environmental Protection Agency
NEPA	National Environmental Policy Act
PACER	Public Access to Court Electronic Records

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United States Government Accountability Office  
Washington, DC 20548

August 1, 2011

The Honorable James M. Inhofe  
Ranking Member  
Committee on Environment and Public Works  
United States Senate

The Honorable David Vitter  
United States Senate

As the primary federal agency charged with implementing many of the nation's environmental laws, the Environmental Protection Agency (EPA) often faces the prospect of litigation over its regulations and other actions. For example, several environmental statutes have provisions that allow citizens—including individuals, states, companies, and associations—to file suit against EPA challenging certain agency actions, such as making regulations or permitting decisions. Where EPA is named as the defendant in lawsuits, the Department of Justice, which is generally responsible for defending federal agencies in court, provides EPA's legal defense, and EPA provides technical expertise. Within Justice, the Environment and Natural Resources Division handles most of the defense work on EPA environmental litigation cases from its Washington, D.C., office, but some of the 94 U.S. Attorneys' Offices, particularly those in the New York City area, also handle a small number of cases and may work on some cases managed by the Environment and Natural Resources Division.

Statutes establishing programs administered by EPA, and under which the agency may be sued, include many of the nation's most prominent environmental laws, such as the Clean Air Act; Clean Water Act; Comprehensive Environmental Response, Compensation, and Liability Act (better known as the Superfund law); Emergency Planning and Community Right-to-Know Act; Federal Insecticide, Fungicide, and Rodenticide Act and related provisions of the Federal Food, Drug, and Cosmetic Act; Resource Conservation and Recovery Act; Safe Drinking Water Act; and Toxic Substances Control Act.<sup>1</sup> In addition, EPA may be

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<sup>1</sup>Some of these laws specifically authorize suits against EPA, while the Administrative Procedure Act, which is the federal law generally governing how federal agencies may propose and establish regulations, authorizes judicial review of certain federal agency actions.

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sued to challenge the agency's compliance with section 7 of the Endangered Species Act, which requires every federal agency, including EPA, to consult with the federal agencies responsible for species management if it is proposing an action—including a major construction project or a regulation or permit—that may affect species protected under the act or habitat designated as critical to the species' survival.

In general, plaintiffs and defendants in lawsuits bear their own litigation costs, although some statutes authorize judges to award attorney fees to a successful, or prevailing, plaintiff. The same holds true in cases involving the federal government: if plaintiffs win a lawsuit against a federal agency, they cannot be awarded attorney fees and court expenses unless authorized by law. Both Justice and EPA incur costs in association with litigation, as does the plaintiff. The types of costs include attorney fees and expenses and court costs. Attorney fees include costs for attorney representation, which is typically charged according to time spent on a case. Other attorney expenses may include costs for expert witnesses, telephone, postage, travel, copying, and computer research expenses. Court costs include fees charged by courts, such as filing fees and reporting fees. In addition, EPA and the plaintiff typically incur costs stemming from time spent on a case, such as meeting with attorneys, negotiations, preparation for trial, and other activities. Payment for authorized attorney fees and costs generally comes from the Department of the Treasury's Judgment Fund, which is a permanent, indefinite appropriation available to pay many judgments against, and settlements by, the United States, or from an agency's appropriated funds.<sup>2</sup>

Currently, no aggregated data on such environmental litigation or associated costs are reported by federal agencies. The key agencies involved—Justice, EPA, and the Treasury—maintain certain data on individual cases in several internal agency databases, but collectively, these data do not capture all costs. Each of Justice's litigation components maintains a separate case management system that gathers information related to individual cases, and we have previously reported that the department's decentralized data management systems make it

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<sup>2</sup>Treasury's Judgment Fund is also used to pay any court judgments that fall under Judgment Fund authorities. Justice's costs to defend EPA in Superfund litigation is reimbursed by EPA pursuant to an annual agreement between the agencies.

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difficult and costly to gather data across divisions.<sup>3</sup> Both Justice and EPA record some case-related payments, including certain data on attorney fees and court costs associated with cases, although neither agency currently reports these data publicly.<sup>4</sup> In addition, Treasury records data on payments made from its Judgment Fund but does not publish them.

In this context, you asked us to review environmental litigation data. Our objectives were to examine (1) trends, if any, in environmental lawsuits against EPA from fiscal year 1995 through fiscal year 2010, as well as stakeholders' views of factors affecting any trends, and (2) Justice's recent costs for representing EPA in defensive environmental lawsuits and the federal government's recent payments to plaintiffs.

To conduct our work, we obtained and analyzed historical data from two components within Justice—Justice's Environment and Natural Resources Division, which defends EPA in most environmental litigation cases, and the Executive Office for U.S. Attorneys, which manages data for the 94 U.S. Attorneys' Offices. We gathered data from the Environment and Natural Resources Division's Case Management System database that tracks basic information on cases, including lead plaintiffs' names, filing and disposition dates, and relevant statutes. We also collected data from the Executive Office for U.S. Attorneys' Legal Information Office Network System, a database that contains similar—but not exactly the same—information for cases handled in part or in entirety by the 94 U.S. Attorneys' Offices. At the start of our engagement, Justice officials informed us that their databases were designed for management purposes rather than trend analysis. Nevertheless, since these databases were the best available sources of information on cases against EPA, we worked with Justice's Environment and Natural Resources Division and the Executive Office for U.S. Attorneys to use the data. From both databases, we examined data on lawsuits filed in federal court from October 1, 1994, through September 30, 2010 (i.e., fiscal year 1995 through fiscal year 2010) that were identified as brought under

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<sup>3</sup>GAO, *DOJ's Civil Rights Division: Opportunities Exist to Improve Its Case Management System and Better Meet Its Reporting Needs*, [GAO-09-938R](#) (Washington, D.C.: Sept. 30, 2009).

<sup>4</sup>From fiscal year 1993 to fiscal year 1994, the Attorney General reported annually to Congress on the amount of attorney fees and other expenses awarded in certain judicial proceedings. See GAO, *Private Attorneys: Selected Attorneys' Fee Awards against Nine Federal Agencies in 1993 and 1994*, [GAO/GGD-96-18](#) (Washington, D.C.: Oct. 31, 1995).

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10 environmental statutes and led by EPA. We excluded cases involving the Freedom of Information Act and contract, employment, or other generally applicable laws under which EPA may also have been sued. We also excluded cases filed under the National Environmental Policy Act (NEPA), which applies to major federal actions significantly affecting the environment, because, according to Justice, few NEPA cases are filed against EPA, and such cases are generally handled by the U.S. Attorneys' Offices and other sections of the Environment and Natural Resources Division, such that significantly more time would be required to include them.

To get their views on any environmental litigation trends and the factors that underlie them, we interviewed a nonprobability sample of the following stakeholders: officials from EPA and Justice; representatives of six environmental groups, six industry associations, and the National Association of Attorneys General; representatives of six state attorneys general or state environmental offices; and a university law professor who is expert in data on citizen suits. The findings from our interviews with stakeholders cannot be generalized to those to whom we did not speak.

We estimated the costs of environmental litigation on the basis of the following three factors: (1) Justice attorneys' labor for fiscal year 1998 through fiscal year 2010, (2) payments made by Treasury from the Judgment Fund for plaintiffs' attorney fees and court costs from fiscal year 2003 through fiscal year 2010, and (3) payments made from EPA appropriations from fiscal year 2006 through fiscal year 2010 (the years for which relevant payment data were available). Because EPA does not track its attorneys' time by case, we were not able to include data on EPA attorney costs spent on environmental litigation cases. In addition, the government may also incur other costs associated with litigation, including the costs of revising regulations in response to lawsuits, EPA overhead costs, and costs associated with delays in EPA permitting, but we did not have reliable data to quantify these costs.

For both Justice databases, we assessed the data and found them to be sufficiently complete and accurate for the purposes of this report. When certain case information was found missing or incorrect in some of the data fields, we did additional research on these cases using the federal courts' electronic records database and corrected the data. Inconsistent formatting of key data elements produced significant problems for completing our analysis and required significant manual review by GAO and Justice.



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We conducted this performance audit from June 2010 through July 2011, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

To carry out its responsibilities under the nation's environmental laws, EPA conducts an array of activities, such as promulgating regulations; issuing and denying permits; approving state programs; and issuing enforcement orders, plans, and other documents. Many of these activities may be subject to legal challenge.<sup>5</sup>

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## Environmental Statutes and Lawsuits against the Federal Government

Generally, the federal government has immunity from lawsuits, but federal laws authorize three types of suits related to EPA's implementation of environmental laws.<sup>6</sup> First, most of the major environmental statutes include "citizen suit" provisions authorizing citizens—including individuals, associations, businesses, and state and local governments—to sue EPA when the agency fails to perform an action mandated by law. These suits are often referred to as "agency-forcing" or "deadline" suits. Second, the major environmental statutes typically include judicial review provisions authorizing citizens to challenge certain EPA actions, such as promulgating regulations or issuing permits. Third, the Administrative Procedure Act<sup>7</sup> authorizes challenges to certain agency actions that are

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<sup>5</sup>Actions that may be challenged in court generally fall into several categories: rulemakings, permit decisions and other approvals, enforcement actions, and other actions. In a rulemaking, EPA publishes a proposed regulation for public review and comment and then issues a final regulation. Generally, challenges may be brought after EPA has issued its final rule. In a permit decision, EPA processes an application according to relevant procedures, which typically provide for a draft permit and opportunity for the applicant and interested public to comment before the agency's issuance or denial of a final permit. Generally, only final permit decisions, including the process by which a decision was made, may be challenged.

<sup>6</sup>These environmental laws typically also authorize suits against other federal agencies for violations. For example, a citizen could file a lawsuit against a federal agency for operating a hazardous waste facility without a Resource Conservation and Recovery Act permit.

<sup>7</sup>Administrative Procedure Act, 60 Stat. 237 (1946), codified as amended at 5 U.S.C. § 551 (2011).

considered final actions, such as rulemakings and decisions on permit applications. As a result, even if a particular environmental statute does not authorize a challenge against EPA for a final decision or regulation, the Administrative Procedure Act may do so. Table 1 lists key environmental laws under which EPA takes actions—or that govern EPA actions—that may be subject to challenge in court.<sup>8</sup>

**Table 1: Selected Environmental Laws**

Statute	General topic	Examples of EPA actions subject to legal challenge
Safe Drinking Water Act	Public drinking water systems	Promulgation of national primary drinking water regulations Approval of state programs Administrative enforcement actions
Clean Water Act	Water pollution, dredging, and filling of waters	Promulgation of regulations Issuance and denial of permits Approval of state programs and certain actions by state agencies Administrative enforcement actions
Clean Air Act	Emission of pollutants into air	Promulgation of national ambient air quality standards Promulgation of air quality regulations Issuance and denial of permits Approval of state programs and state implementation plans Administrative enforcement actions
Resource Conservation and Recovery Act	Solid and hazardous waste storage, handling, treatment, and disposal	Promulgation of regulations Issuance and denial of permits Approval of state programs Administrative enforcement actions
Comprehensive Environmental Response, Compensation, and Liability Act	Releases of hazardous substances and their cleanup	Cleanup remedies (after implementation) Promulgation of regulations
Toxic Substances Control Act	Toxic substances used in commerce	Promulgation of regulations Approval and denial of chemical registrations Administrative enforcement actions

<sup>8</sup>Not all EPA actions are subject to legal challenge. For example, the Safe Drinking Water Act specifically precludes suits challenging EPA's list of contaminant candidates, a list periodically issued by EPA enumerating contaminants that may require regulation under the act.

Statute	General topic	Examples of EPA actions subject to legal challenge
Emergency Planning and Community Right-to-Know Act	Reporting releases of toxic chemicals	Promulgation of regulations Administrative enforcement actions
Federal Insecticide, Fungicide, and Rodenticide Act	Pesticides	Promulgation of regulations Approval and denial of pesticide applications
Federal Food, Drug, and Cosmetic Act	Pesticides used on food	Establishment of pesticide tolerances
Endangered Species Act	Agency actions affecting threatened and endangered species	Any actions taken under a substantive law may trigger action under the Endangered Species Act

Source: GAO.

Supporters of provisions allowing legal challenges to actions of the federal government assert that they provide a check on the authority of federal agencies as they carry out—or fail to carry out—their duties. For example, in passing the 1977 Clean Air Act amendments, a key sponsor indicated that authorizing citizens to sue agencies to compel them to carry out their duties is integral to a democratic society.<sup>9</sup> According to others, citizen suits against government agencies have achieved benefits, such as ensuring the implementation of congressional directives or accelerating regulatory programs.<sup>10</sup> Similarly, the Administrative Procedure Act arose out of the expansion of the federal government in the New Deal, with concerns about agencies’ adjudicative powers, their exercise of delegated legislative power by rulemakings, and the scope of review of agency administrative action by courts.

A lawsuit challenging EPA’s failure to act may begin when the aggrieved party sends EPA a notice of intent to sue, if required, while a lawsuit challenging a final EPA action begins when a complaint is filed in court.<sup>11</sup>

<sup>9</sup>Committee on Public Works, *A Legislative History of the Clean Air Amendments of 1970*, at 351 (1974) (remarks of Senator Muskie). The Clean Air Act’s citizen suit provision was the model for similar provisions in other environmental statutes.

<sup>10</sup>Edward Lloyd, *Citizen Suits and Defenses against Them*, ALI-ABA Environmental Litigation (2008). See also Robert Glicksman, *The Value of Agency-Forcing Citizen Suits to Enforce Nondiscretionary Duties*, 10 Widener L. Rev. 353 (2004). For a critical view of citizen suits under the Clean Air Act, see Randy E. Brogdon and Mack McGuffey, *Recent Trends in CAA Citizen Suits: Managing Risk in the Serengeti*, 20-WTR Nat’l Resources & Env’t., 17 (2006).

<sup>11</sup>Generally, the environmental statutes’ citizen-suit provisions require a prospective plaintiff to first send EPA a formal notice of intent to sue. Conversely, neither these statutes’ judicial review provisions nor the Administrative Procedure Act impose a notice requirement.

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Before EPA takes final action, the public or affected parties generally have opportunities to provide comments and information to the agency. In addition, administrative appeals procedures are available—and in many cases required<sup>12</sup>—to challenge EPA’s final action without filing a lawsuit in a court.<sup>13</sup> For example, citizens can appeal an EPA air emission permit to the agency’s Environmental Appeals Board. These administrative processes provide aggrieved parties with a forum that may be faster and less costly than a court.

If a party decides to pursue a case, the litigation process generally involves filing of a complaint, formal initiation of the litigation; motions to the court before trial, such as asking for dismissal of the case; and hearings and court decisions. Throughout this process, the parties to the litigation can decide to reach a settlement. Negotiations between the aggrieved party and EPA may occur anytime after the agency action, at any point during active litigation, and even after judgment. A common remedy sought in litigation against EPA under the statutes listed in table 1 is for the court to set aside an EPA regulation or permit decision and to require EPA to reconsider that regulation or permit decision.

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## The Equal Access to Justice Act

In the United States, parties involved in litigation generally pay their own attorney fees and costs, except in instances in which Congress has provided exceptions for policy reasons, such as to encourage citizens to bring suits to enforce the law. In these instances, as well as some common-law exceptions, a prevailing plaintiff may seek award of its attorney fees and court costs from the losing party. Many of the environmental statutes in table 1 contain such exceptions authorizing

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<sup>12</sup>In general, a party must first exhaust all available administrative appeals before initiating a judicial suit.

<sup>13</sup>For example, EPA’s Environmental Appeals Board can decide disputes such as appeals from permit decisions, civil penalty decisions, and other administrative decisions.

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courts to award fees, which, according to Justice, include awards against the federal government.<sup>14</sup>

In 1980, Congress enacted the Equal Access to Justice Act (EAJA) authorizing the award of attorney fees and costs to parties that prevail in certain lawsuits against the federal government; the payments are made from Treasury's Judgment Fund and agency appropriations. While the federal government was already subject to some of these exceptions in environmental statutes, before EAJA was enacted, the federal government in many other cases was not subject to these exceptions and therefore was not authorized to make payments to prevailing parties. As the 1980 conference committee report for EAJA explains, the act's premise is that individuals, corporations, partnerships, and labor and other organizations do not seek review of or defend against unreasonable government actions because of the expense involved, as well as a disparity in expertise and resources between the government and the individual or organization involved.<sup>15</sup> For those cases brought under statutes that do not make the federal government subject to pay fees and costs, EAJA thus allows payment of the attorney fees and other costs if the organizations sought review of a government action and prevailed.<sup>16</sup> (See app. II for a detailed description of the act.)

Except as otherwise specifically provided by law, EAJA authorizes the award of the following costs to be paid from Treasury's Judgment Fund or an agency's appropriations, as indicated:

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<sup>14</sup>In general, before the Equal Access to Justice Act (EAJA) was enacted, under the principle of sovereign immunity, the federal government was not subject to many of these exceptions and therefore was not authorized to make payments to prevailing parties. According to Justice, however, the relevant provisions of many key environmental statutes are applicable to the federal government, and thus the government is subject to court awards to prevailing parties independent of EAJA. See, e.g., Clean Air Act, 42 U.S.C. §§ 7604(d), 7607(f) (2011); Clean Water Act, 33 U.S.C. §§ 1365(d), 1369(b)(3) (2011).

<sup>15</sup>H.R. Conf. Rep. 96-1434, at 20-27 (1980) (Conference committee report on Pub. L. No. 96-481, The Small Business Export Expansion Act of 1980, of which Title II is the Equal Access to Justice Act).

<sup>16</sup>According to some in Congress, parties who choose to litigate an issue against the federal government help refine and formulate public policy by ensuring the legitimacy and fairness of the law being contested. Where policy changes are required, some believe that the costs should be borne by the government.

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- *Court costs of prevailing parties* against the United States in any civil action. These costs may include fees for the clerk and marshal, reporter, printing, witnesses, copies, docket fees, and interpreters and court-appointed experts and may include an amount equal to the filing fees. Payment of costs made under this section generally are paid by Treasury's Judgment Fund.
  - *Reasonable attorney fees and expenses of a prevailing party* to the same extent as any other party where a statutory or common-law exception provides for award of fees to a prevailing party.<sup>17</sup> Regarding the environmental statutes in table 1, according to Justice, many of the relevant provisions under which EPA may be sued provide for award of such fees against EPA, independent of EAJA. Nevertheless, EAJA makes EPA subject to fee awards under all the environmental statutes' provisions authorizing courts to award attorney fees and expenses. Therefore, in many—but not all—of the environmental lawsuits against EPA, a court may award attorney fees and expenses of a prevailing party against the agency, independently or as a result of EAJA section 2412(b).<sup>18</sup> Payment of awards made under this section generally are paid by Treasury's Judgment Fund.
  - *Attorney fees and expenses of a prevailing party* in most other cases—that is, when the relevant statute does not authorize courts to award attorney fees and expenses, and no common-law exception applies—unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.<sup>19</sup> Two laws listed in table 1—the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act—as well as some individual provisions of other statutes, do not authorize payment of fees to prevailing parties. As a result, in cases brought against EPA under these statutes and provisions,

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<sup>17</sup>For example, courts recognize a common-law exception allowing award of attorney fees to prevailing parties in instances of bad faith.

<sup>18</sup>This provision does not limit the eligibility of prevailing plaintiffs, and the statute requires that the fees be "reasonable" rather than impose a specific cap on the hourly rate of attorney fees for payment purposes. In addition, any fees awarded under this section are subject to any limitations that would apply to analogous awards against private parties, which may be provided by an underlying statute.

<sup>19</sup>EAJA authorizes the award of these fees against the federal government in both civil court actions, excluding tort cases, such as personal injury suits, as well as certain agency adjudications.

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courts award payment of fees under EAJA section 2412(d).<sup>20</sup>

Payment of awards made under this section is generally made from agency appropriations.

In addition, to settle a case, the government may agree to pay a plaintiff court costs and attorney fees and expenses. Payments made in connection with settlements are paid in the same manner as a court award for the case.

Some in Congress have expressed concerns that the use of taxpayer funds to make EAJA payments depletes limited funding; these individuals have called for transparency of these expenditures. Originally, EAJA provided for governmentwide reporting on its use and cost. For judicial proceedings, EAJA required the Director of the Administrative Office of the U. S. Courts to report annually to Congress on EAJA court activity, including the number, nature, and amounts of awards; claims involved; and any other relevant information deemed necessary to aid Congress in evaluating the scope and effect of awards under the act. The responsibility for this reporting was transferred to the Attorney General in 1992. In addition, EAJA required the Chairman of the Administrative Conference of the United States to submit an EAJA report annually to Congress on administratively awarded fees and expenses. Then, in December 1995, the Federal Reports Elimination and Sunset Act of 1995 repealed the Attorney General's reporting requirement for fees and expenses awarded under EAJA and also discontinued reporting of

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<sup>20</sup>This section limits the prevailing plaintiff's eligibility to receive payment by defining an eligible party as, at the time the lawsuit is filed, either an individual with a net worth below \$2 million; or a business owner or any partnership, corporation, association, local government, or organization with a net worth below \$7 million and fewer than 500 employees. However, tax-exempt nonprofit organizations and certain agricultural marketing cooperatives are considered parties regardless of net worth.

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governmentwide administrative awards of fees and costs under EAJA after fiscal year 1994.<sup>21</sup>

We have previously reported certain governmentwide EAJA data, as well as data focused on selected agencies. In 1995, we reported data on the number of cases and amounts of awarded plaintiff attorney fees exceeding \$10,000 against nine federal agencies for cases closed during fiscal years 1993 and 1994.<sup>22</sup> In 1998, we provided information on the history of EAJA, the extent to which one provision of the act was used governmentwide from 1982 to 1994, and the provision's use by the Department of Labor and other agencies.<sup>23</sup> The governmentwide data for fiscal year 1994 showed, among other things, that the Departments of Health and Human Services and of Veterans Affairs accounted for most EAJA payments in court proceedings, under the provision that applies when the substantive law does not authorize award of attorney fees and costs.<sup>24</sup>

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<sup>21</sup>Currently, there are no statutory requirements in effect for agency or governmentwide reporting of payments made under EAJA for either administrative or judicial proceedings. According to officials from the Administrative Conference of the United States, the conference has begun to obtain and compile such information for fiscal year 2010, noting that there has been continued interest in Congress (including pending legislation) regarding data on payments under EAJA. Officials told us the conference has requested EAJA data from 50 government agency conference members, as well as a few additional agencies that had previously reported EAJA activity to the conference. The chairman plans to publish a report for fiscal year 2010 later in 2011.

<sup>22</sup>[GAO/GGD-96-18](#).

<sup>23</sup>GAO, *Equal Access to Justice Act: Its Use in Selected Agencies*, [GAO/HEHS-98-58R](#) (Washington, D.C.: Jan. 14, 1998).

<sup>24</sup>28 U.S.C. § 2412(d) (2011).



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**The Number of Environmental Litigation Cases against EPA Showed No Discernible Trend over 16 Years, and Stakeholders Stated That Various Factors Affected Yearly Numbers**

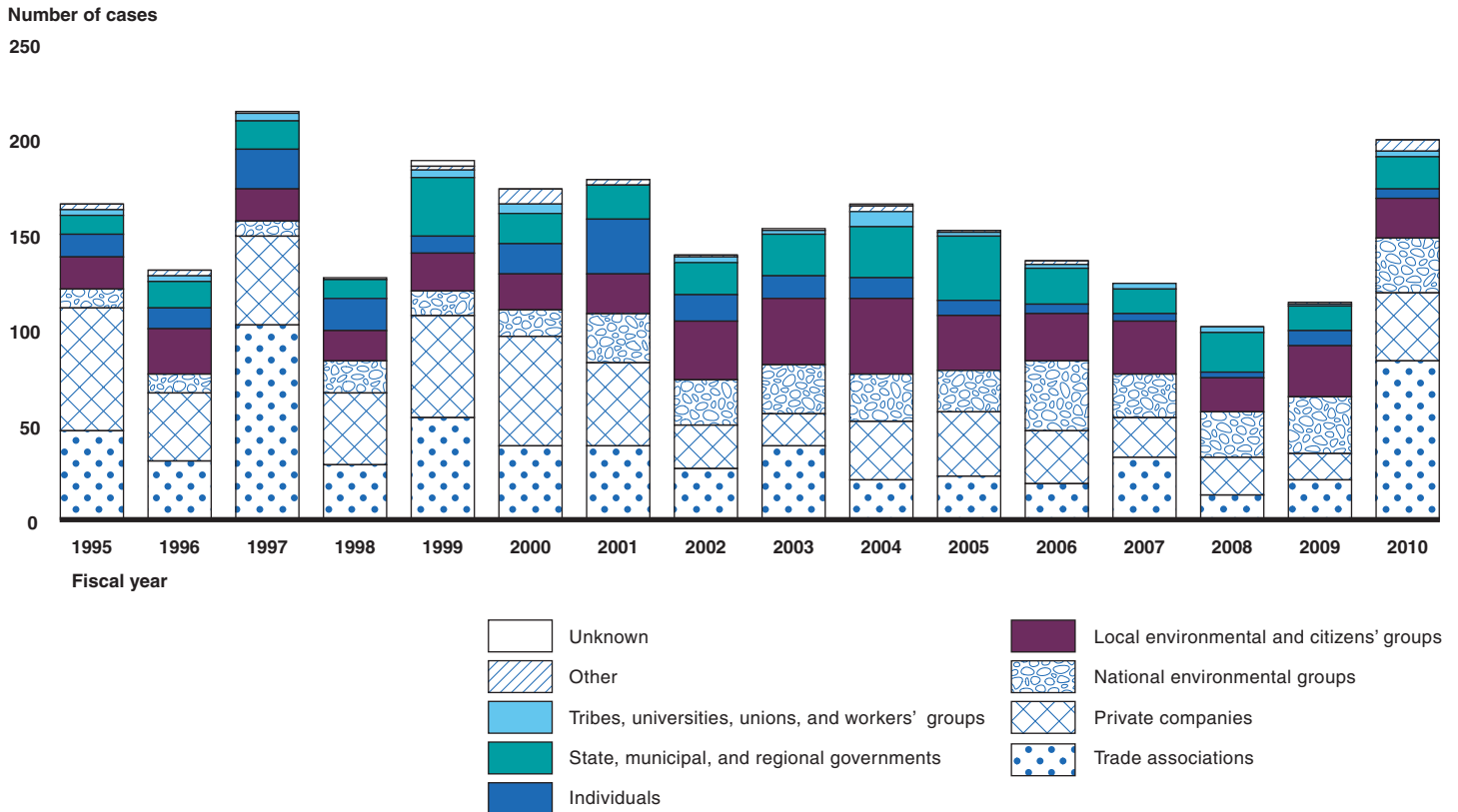
The number of environmental litigation cases brought against EPA each year from fiscal year 1995 through fiscal year 2010 varied but showed no discernible trend. According to the stakeholders we interviewed, a number of factors—particularly presidential administration, the passage of new regulations or amendments to laws, or EPA’s failure to meet statutory deadlines—affect the number of environmental litigation cases each year and the type of plaintiffs who bring them.

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**No Trend Was Discernible in the Number of Cases Brought against EPA from Fiscal Year 1995 through Fiscal Year 2010**

The number of environmental litigation cases brought against EPA each year from fiscal year 1995 through fiscal year 2010 varied but did not change systematically over time. The average number of new cases filed each year was 155, ranging from a low of 102 new cases filed in fiscal year 2008 to a high of 216 cases filed in fiscal year 1997 (see fig. 1). From fiscal year 1995 through fiscal year 2001, the average number of new cases was 170; from fiscal year 2002 through fiscal year 2010, the average number of new cases was 144, a difference of 26 fewer new cases on average. The average number of new cases in these periods varied from the long-term average of 155 cases by less than 10 percent. In all, Justice defended EPA in nearly 2,500 cases from fiscal year 1995 through fiscal year 2010.

**Figure 1: Environmental Cases Filed against EPA, Fiscal Year 1995 through Fiscal Year 2010**



Source: GAO analysis of Justice data.

The greatest number of cases was filed in fiscal year 1997, which, according to a Justice official, may be explained by the fact that EPA revised its national ambient air quality standards for ozone and particulate matter in 1997, which may have caused some groups to sue. In addition, according to the same official, in 1997 EPA implemented a “credible

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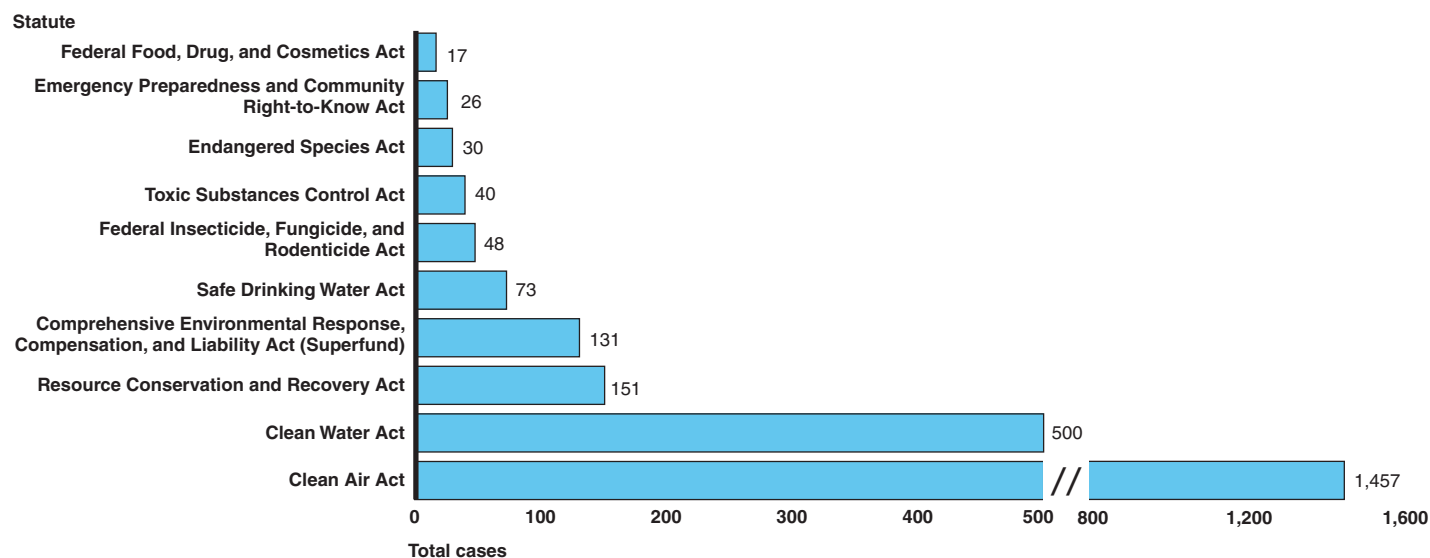
evidence” rule, which also was the subject of additional lawsuits.<sup>25</sup> The fewest cases against EPA (102) were filed in fiscal year 2008, and Justice officials were unable to pinpoint any specific reasons for the decline. In fiscal years 2009 and 2010, the caseload increased. A Justice official said that it is difficult to know why the number of cases might increase because litigants sue for different reasons, and some time might elapse between an EPA action and a group’s decision to sue.

As shown in figure 2, most cases against EPA were brought under the Clean Air Act, which represented about 59 percent of the approximately 2,500 cases that were filed during the 16-year period of our review. Cases filed under the Clean Water Act represented the next largest group of cases (20 percent), and the Resource Conservation and Recovery Act represented the third largest group of cases (6 percent).

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<sup>25</sup>EPA’s “credible evidence” rule, 62 Fed. Reg. 8314 (Feb. 24, 1997), allows any credible evidence to be used in enforcement actions related to operating permits under Clean Air Act emissions standards. Trade associations representing various industry groups, including car manufacturers, lumber companies, steel producers, petroleum companies, and mining companies challenged the rule in federal court. Twenty-five petitions were filed in the D.C. Court of Appeals, which consolidated them. See *Clean Air Implementation Project v. Environmental Protection Agency*, 150 F.3d 1200 (D.C. Cir. 1998).

**Figure 2: Environmental Cases Filed against EPA by Statute, Fiscal Year 1995 through Fiscal Year 2010**



Source: GAO analysis of data from Justice's Environment and Natural Resources Division.

Note: Nine cases did not have information on statute.

The lead plaintiffs filing cases against EPA during the 16-year period fit into several categories. The largest category comprised trade associations (25 percent), followed by private companies (23 percent), local environmental groups and citizens' groups (16 percent), and national environmental groups (14 percent). Individuals, states and territories, municipal and regional government entities, unions and workers' groups, tribes, universities, and a small number of others we could not identify made up the remaining plaintiffs (see table 2). Appendix I gives more information about our method of developing these categories and classifying cases.

**Table 2: Share of Cases by Lead Plaintiff Type: Fiscal Year 1995 through Fiscal Year 2010**

Type of group <sup>a</sup>	Number of cases	Percentage
Trade associations	622	25
Private companies	566	23
Local environmental and citizens' groups	388	16
National environmental groups	338	14
States, territories, municipalities, and regional government entities	297	12
Individuals	185	7
Unions, workers' groups, universities, and tribes	46	2
Other	33	1
Unknown	7	1 <sup>b</sup>
<b>Total</b>	<b>2,482</b>	<b>100</b>

Source: GAO.

<sup>a</sup>For more information on each of these groups, see appendix I.

<sup>b</sup>Less than 1 percent.

## Stakeholders Stated That Various Factors Influence Environmental Litigation

According to the stakeholders we interviewed, a number of factors—particularly a change in presidential administration, the passage of regulations or amendments to laws, and EPA's failure to meet statutory deadlines—affect plaintiffs' decisions to bring litigation against EPA. Stakeholders did not identify any single factor driving litigation, but instead, attributed litigation to a combination of different factors.

According to most of the stakeholders we spoke with, a presidential administration is an important factor in groups' decisions to bring suits against EPA. Some stakeholders suggested that a new administration viewed as favoring less enforcement could spur lawsuits from environmental groups in response, or industry groups could sue to delay or prevent the administration's actions. For example, a presidential administration that seems to favor less enforcement of requirements under environmental statutes could motivate increased litigation. Other stakeholders suggested that if an administration is viewed as favoring greater enforcement of rules, industry may respond to increased activity by bringing suit against EPA to delay or prevent the administration's actions, while certain environmental groups may bring suit with the aim of ensuring that required agency actions are completed during an administration they perceive as having views similar to the groups' own.

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Most of the stakeholders also suggested that the development of new EPA regulations or the passage of amendments to environmental statutes may lead parties to file suit against the new regulations or against EPA's implementation of the amendments. When EPA issues new or amended regulations, parties may take issue with the specific new provisions. One stakeholder noted that an industry interested in a particular issue may become involved in litigation related to the development of regulations because it wishes to be part of the regulatory process and negotiations that result in a mutually acceptable rule. In addition, several of the stakeholders noted that if EPA does not meet its statutory deadlines, organizations or individuals might sue to enforce the deadline. In such suits, interested parties seek a court order or a settlement requiring EPA to implement its statutory responsibilities.

In addition, some stakeholders said that some statutes are broadly written or contain vague language or definitions; such statutes are more likely to be litigated because different parties want to define the terms and set precedent for future cases. For example, a stakeholder representing states' perspectives said that under the Clean Water Act, an area of frequent litigation is the definition of "navigable waters." Through lawsuits, litigants have argued about whether a certain body of water comes within the definition and can therefore be regulated under the act.

A few stakeholders identified two other factors that may affect litigation: (1) the maturity of the statute in question and (2) the use of existing laws to address new problems. The stakeholders said that the focus of litigation over a particular statute changes with time, as early cases may set precedents that will affect how the statute is implemented later. Also, a representative of an environmental organization said that because no major rewriting of any environmental statutes has occurred in 20 years, plaintiffs are increasingly bringing suits, and judges are making decisions, about how to interpret statutes in situations for which rules were not explicitly written. For example, parties disagree over whether the Clean Air Act should be used to regulate greenhouse gases, such as carbon dioxide, methane, and nitrous oxide—substances that some stakeholders say the act was not originally designed to regulate.

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**Available Data  
Indicate That Costs  
Associated with  
Environmental  
Litigation against  
EPA, including  
Payments to  
Plaintiffs, Have Varied  
over the Past 10 Years  
with No Discernible  
Trend**

Data available from Justice, Treasury, and EPA show that the costs associated with environmental litigation cases against EPA have varied from year to year with no discernible trend. Justice's Environment and Natural Resources Division spent a total of about \$43 million to defend EPA in these cases from fiscal year 1998 to fiscal year 2010, averaging \$3.3 million per year.<sup>26</sup> Some cost data from the Department of Justice are not available, however, in part because Justice's Environment and Natural Resources Division and the U.S. Attorneys' Offices do not have a standard approach for maintaining key data for environmental litigation cases. For example, while the Environment and Natural Resources Division tracks attorney hours by case, the U.S. Attorneys' Offices do not. Treasury paid a total of about \$14.2 million to prevailing plaintiffs for attorney fees and costs related to these cases from fiscal years 2003 through 2010, averaging about \$1.8 million per year. EPA paid a total of \$1.4 million from fiscal year 2006 through fiscal year 2010 in attorney fees and costs, averaging about \$280,000 per year.

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**On Average, Justice Spent  
at Least \$3.3 Million a Year  
Defending EPA against  
Environmental Litigation  
in Fiscal Year 1998 through  
Fiscal Year 2010**

Our analysis of data from Justice's Environment and Natural Resources Division found that from fiscal year 1998 through fiscal year 2010, Justice spent at least \$3.3 million on average annually to defend EPA against environmental litigation, for a total of \$43 million.<sup>27</sup> (The Environment and Natural Resources Division fiscal year 2010 budget was \$110 million.) The U.S. Attorneys' Offices' database, however, does not contain information on attorney hours worked by case, which meant that we could not include the time these attorneys spent on each case in our estimate. According to Justice officials, however, the \$3.3 million average per year represents the majority of Justice's time spent defending EPA each year, given that the U.S. Attorneys' Offices handle a small number of environment-related cases each year.<sup>28</sup> Overall, as shown in figure 3, annual costs increased by an average of about 3 percent each year from

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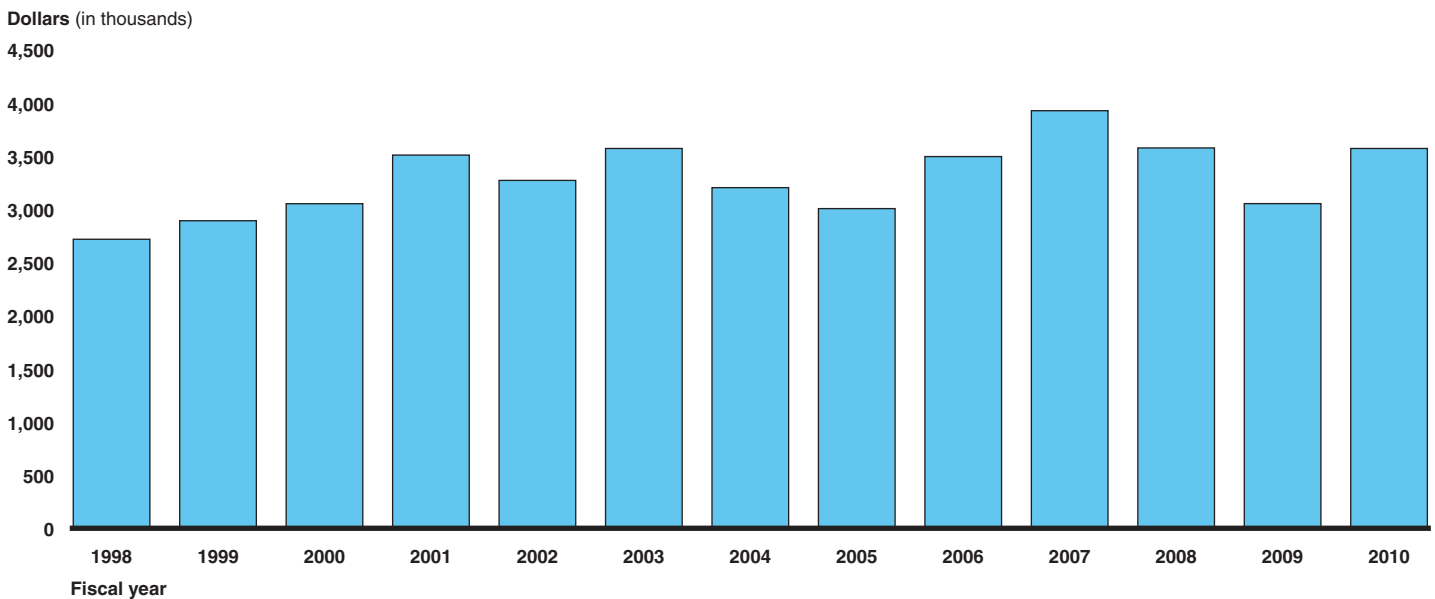
<sup>26</sup>Except where otherwise noted, all figures are in constant 2010 dollars.

<sup>27</sup>We excluded data for fiscal years 1995 through 1997 from our cost estimate per case because the data for those years include only the number of cases filed during those years, not the total number of cases worked on that started in previous years. Including those years would make costs appear artificially low compared with later years, which include both new and continuing cases filed from 1995 onward. We estimated attorneys' costs by using the Justice data and making a number of adjustments.

<sup>28</sup>If all else remains the same, inclusion of cost such as the U.S. Attorneys' Offices' costs would increase our estimated costs.

fiscal year 1998 through 2010, ranging from a low of \$2.7 million in fiscal year 1998 to a high of \$3.9 million in fiscal year 2007.

**Figure 3: Estimated Environment and Natural Resources Division Attorney Costs for EPA Defensive Cases, Fiscal Year 1998 through Fiscal Year 2010**



Source: GAO analysis of data from Justice's Environment and Natural Resources Division.

Note: All amounts are given in constant 2010 dollars.

## The Department of Justice Does Not Have a Standard Approach for Maintaining Key Data on Environmental Litigation Cases

Justice maintains separate, decentralized databases containing environmental case information and does not have a standard approach for collecting and entering data on these cases. Without a standard approach, it is difficult to identify and summarize the full set of environmental litigation cases and costs managed by the department agencywide. Specifically, the department's Environment and Natural Resources Division and the U.S. Attorneys' Offices maintain different case management systems, and these systems do not use the same unique number to identify cases, making it possible to track cases within each component but not to align and merge cases from the two components. Because the U.S. Attorneys' Offices may assist the Environment and Natural Resources Division in certain case activities, a single case may appear in both systems, each with a different unique identifier. The only piece of data in both databases that can in practice be used to identify cases managed by both components is the court number,



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yet neither system has adopted the standard court number format used in the federal judiciary's Public Access to Court Electronic Records system, an electronic service that allows public access to case and docket information from federal appellate, district, and bankruptcy courts. According to an official of the Executive Office for U.S. Attorneys, the individual U.S. Attorneys' Offices may enter the court numbers in the specific formats used by the courts in their individual jurisdictions, although the official also said that there is no formal or written guidance for proper format of court numbers. Without such standard identifying numbers, it is difficult to identify a full and unduplicated list of environmental litigation cases and to derive descriptive statistics on costs, statute, or opposing parties. Because the department's data on environmental litigation cannot be reliably merged or aggregated to provide summary information on environmental cases, we had to use an iterative electronic and manual process to compile data from the two systems to conduct our review and identify the full set of environmental litigation cases and associated costs.

Moreover, not only are the two Justice databases separate, but the two agency components do not collect the same types of data on environmental cases. Specifically, the U.S. Attorneys' database does not collect data on the number of hours attorneys spend on an individual case or information on the statute under which a case is filed. As a result, it is impossible to gather complete data on all environmental litigation cases and costs from these databases. For example, we were unable to calculate the total number of hours that Justice attorneys worked on environmental cases—and hence, total costs of attorney time—because the U.S. Attorneys' time is not tracked by case.

By employing an iterative electronic and manual process to standardize the court numbers associated with all cases and matching cases from the two systems by these numbers, we were ultimately able to merge the two sets of data on environmental litigation cases managed by Justice's Environment and Natural Resources Division and the U.S. Attorneys' Offices for purposes of this report. Justice officials said, however, that they do not plan to change their approach to managing the data because they use the data in each system to manage individual cases, not to identify and summarize agencywide data on cases or trends. Officials said that their systems were designed for internal management purposes and not agencywide statistical tracking. Furthermore, while funds are spent to maintain the systems, officials indicated that the systems are old, and adding data fields or otherwise making changes to the systems may be technically infeasible or too costly. Justice officials said that the

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department previously sought to develop and implement a single case management system to gather common data agencywide, but the project was terminated in 2010 after a 2009 Office of the Inspector General report found that the project was more than 2 years behind the initial estimated completion date and that the project's total cost would be more than \$18 million over budget. Because the two Justice components are not regularly required to merge and report their data in a systematic way, we are not making a recommendation regarding these data or systems.

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**On Average, Treasury Paid Successful Plaintiffs \$1.8 Million Annually from the Judgment Fund over the Last 8 Years, and EPA Paid about \$280,000 a Year over the Last 5 Years**

In addition to Justice's costs of defending EPA, costs of litigation include payment of attorney fees and court costs to plaintiffs who prevail in lawsuits against EPA. As part of the payment process, Justice negotiated payment amounts with prevailing parties before finalizing the amount to be paid. For most of the claims under the 10 environmental statutes in this report, payments to successful plaintiffs were made from Treasury's Judgment Fund. Justice defended approximately 2,500 EPA-related cases filed from fiscal year 1995 through fiscal year 2010, but the number of environmental litigation cases from which plaintiffs received payments was small, representing about 8 percent of all cases.<sup>29</sup> In addition, EPA made a small number of payments for attorney fees and costs under the appropriate provision of EAJA.

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<sup>29</sup>Of the approximately 2,500 cases, about 25 percent remain open in Justice's databases. Generally, payment of attorney fees and costs is among the last actions before a case is closed, although in some cases payments may be made while the case is open. For example, for a complex case, some parties may settle and receive payment, whereas the case may continue with other parties for several years. Thus, for the open cases, there could be associated attorney fees and cost payments in the future. Among only those cases that are closed in the databases, approximately 11 percent have a reported payment associated with them.

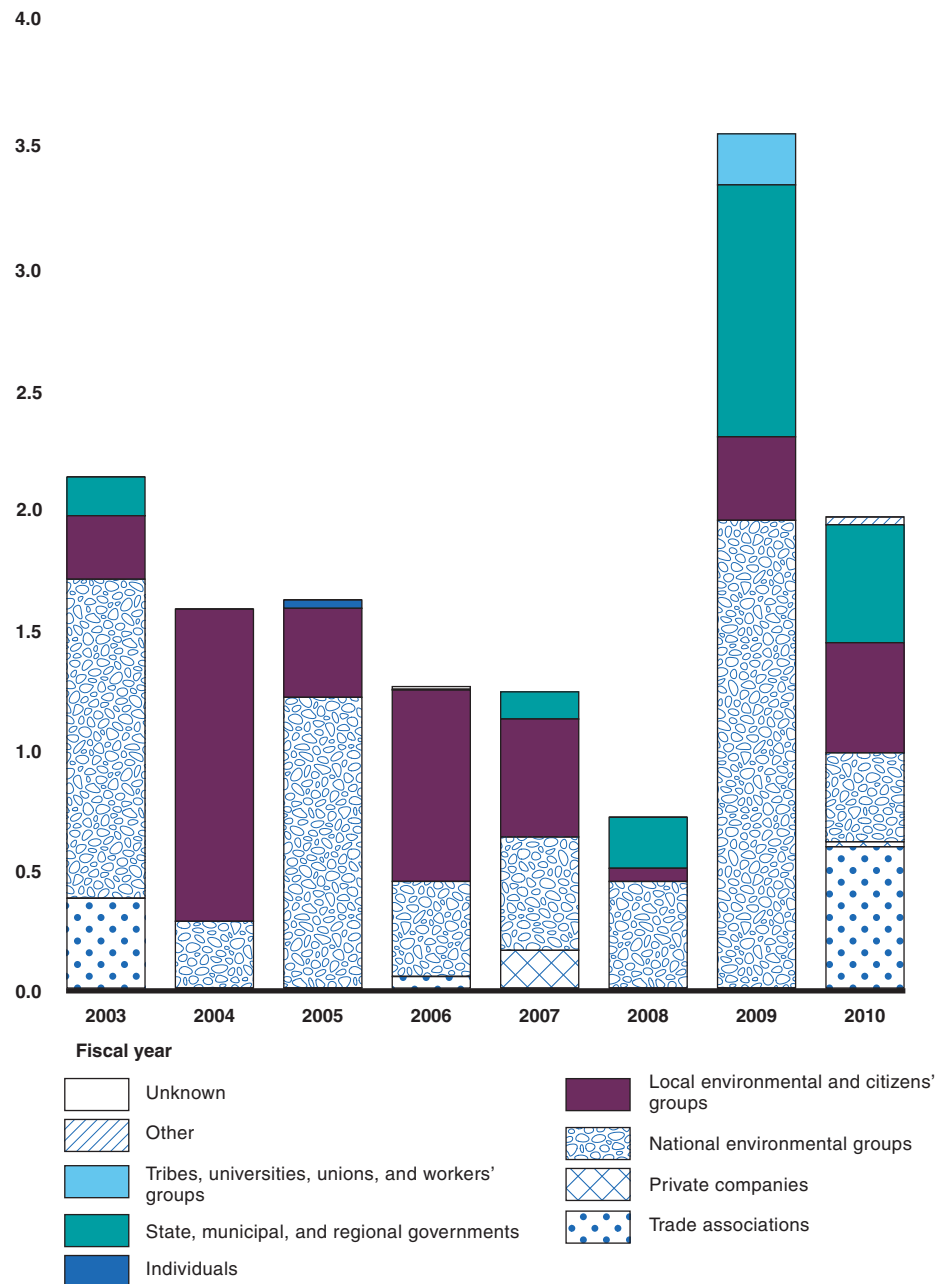
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## Treasury's Judgment Fund Payments

From fiscal year 2003—the first year for which Treasury's Judgment Fund data are available—through fiscal year 2010, Treasury made, on average, 26 payments totaling \$1.8 million per year for EPA-related environmental cases. The average Judgment Fund payment was \$68,600 per payment. Treasury paid a total of about \$14.2 million out of its Judgment Fund to prevailing plaintiffs for attorney fees and costs related to these cases (see fig. 4). The largest share of monies (46 percent) were made in cases filed by national environmental groups, followed by monies paid for cases filed by local environmental and citizens' groups (29 percent). The payments ranged from as little as \$145, to the administrator of a law school clinic for a Clean Air Act suit, to as much as \$720,000, to a private law firm for a Clean Water Act suit. According to Justice officials, payments are made either to the plaintiff or to the plaintiff's attorneys. Appendix III lists payments from Treasury's Judgment Fund for the environmental statutes in our review.

**Figure 4: Treasury's Judgment Fund Payments, Fiscal Year 2003 through Fiscal Year 2010**

Dollars (in millions)



Source: GAO analysis of Treasury data.

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Note: We omitted Superfund cases because we could not determine whether Treasury's Judgment Fund payments were for attorney fees and court costs or for reimbursements of site cleanups, which are not within the scope of our work.

Fluctuations in annual payments may occur, according to Justice officials, because payments to plaintiffs can be made several years after a case is completed, in part because Justice attempts to negotiate settlements of attorney fee claims before seeking a determination by the courts regarding claims that cannot be settled. Officials said that through this process of negotiation, the department pays plaintiffs, in the majority of cases, an amount that is much lower than requested. To determine attorney fees for each case, Justice considers, among other things, documentation by the plaintiff, including such factors as (1) the number of hours the plaintiff's attorneys spent on the case, which must be documented by the plaintiff; (2) the job description of the person spending time on the case (e.g., the costs for a paralegal and a lead counsel would be very different); (3) the specific tasks performed; and (4) applicable law in the jurisdiction, such as limits on hourly attorney fees or total amounts that courts have approved in the past.<sup>30</sup> Although Justice may conclude that the hours are justified, fees may still be denied because of court precedent. Each time fees are negotiated, depending on the amount, Justice's Assistant Attorney General or the relevant Environment and Natural Resources Division Section Chief must approve the result, pursuant to applicable regulations and delegations.

## EPA Payments

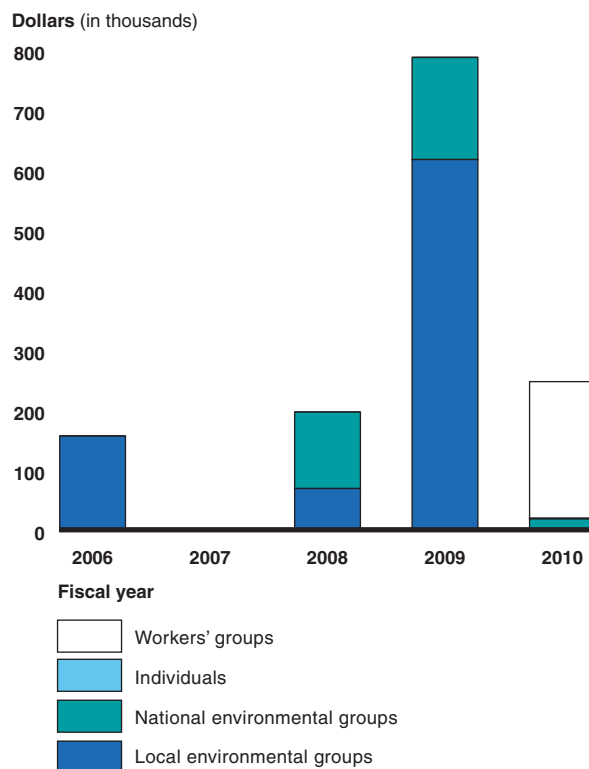
From fiscal year 2006—the first year for which EPA specifically tracked the payments by type of claim—through fiscal year 2010, EPA made 14 payments, totaling \$1.4 million, for attorney fees and other costs under EAJA. EPA made an average of 2.8 payments per fiscal year, with an average payment of about \$100,000. On average, EPA paid about \$280,000 per year. The largest share of the monies (61 percent) went to payments for claims filed by local environmental groups, followed by monies (23 percent) for claims filed by national environmental groups. Although workers' groups filed comparatively few lawsuits, one such

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<sup>30</sup>For the District of Columbia district court and circuit court, Justice uses the Laffey matrix as a guide, but for other parts of the country, Justice consults with local U.S. Attorneys' Offices about reasonable rates for that area or reviews relevant court decisions on attorney fee awards in that jurisdiction, since there is no single template of average rates to pay for attorney fees across the rest of the nation. The Laffey matrix provides hourly rates for attorneys of varying experience levels for the District of Columbia.

group did receive a single payment of \$230,000 in fiscal year 2010 (see fig. 5).

**Figure 5: Amount Paid by EPA under EAJA for Environmental Cases, Fiscal Year 2006 through Fiscal Year 2010**



Source: GAO analysis of Treasury data.

Note: EPA made payments in calendar year 2007 but not in fiscal year 2007.

The EPA payments ranged from \$1,179, which was paid to an individual for a Clean Water Act suit in 2010, to \$472,967, which was paid to an environmental group for two Clean Water Act suits, including one appeal. Appendix III contains a list of payments by payee.

## Agency Comments and Our Evaluation

We provided a draft of this report to EPA, Justice, and Treasury for their review and comment. EPA did not provide comments, and Justice and Treasury had technical comments, which we incorporated as appropriate.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Attorney General of the United States, the Secretary of the Treasury, the Administrator of EPA, and other interested parties. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or [trimbled@gao.gov](mailto:trimbled@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.

A handwritten signature in black ink, reading "David C. Trimble". The signature is written in a cursive, flowing style.

David C. Trimble  
Director, Natural Resources and Environment

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# Appendix I: Objectives, Scope, and Methodology

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This report describes (1) trends, if any, in environmental lawsuits against the Environmental Protection Agency (EPA) from fiscal year 1995 through fiscal year 2010, as well as stakeholders' views of factors affecting any trends, and (2) Justice's recent costs for representing EPA in defensive environmental lawsuits and the federal government's recent payments to plaintiffs.

To examine the changes over time to EPA's environmental litigation caseload, we obtained and analyzed data on lawsuits filed against the agency from databases maintained by two components within the Department of Justice—the Case Management System database maintained by Justice's Environment and Natural Resources Division and the Legal Information Office Network System database maintained by Justice's U.S. Attorneys' Offices. We obtained and analyzed data from these databases for lawsuits:

- filed in federal court from fiscal year 1995 through fiscal year 2010 (Oct. 1, 1994, through Sept. 30, 2010);
- in which EPA was the lead defendant, excluding cases in which EPA was a defendant but the lead defendant identified by Justice was another agency, such as the U.S. Army Corps of Engineers;
- brought under 10 major environmental statutes implemented by or applying to EPA, including the Clean Air Act; Clean Water Act; Safe Drinking Water Act; Resource Conservation and Recovery Act; Comprehensive Environmental Response, Compensation, and Liability Act (Superfund); Emergency Planning and Community Right-to-Know Act; Federal Insecticide, Fungicide, and Rodenticide Act; Federal Food, Drug, and Cosmetic Act; Toxic Substances Control Act; and the Endangered Species Act as it applies to EPA.

We excluded cases filed under the National Environmental Policy Act (NEPA) because these cases are managed by a number of sections within the Environment and Natural Resources Division, and because, according to Justice officials, few cases are filed under NEPA with EPA as the lead defendant. We also excluded the Freedom of Information Act, Discrimination in Federal Employment Act, Fair Labor Standards Act, and other generally applicable laws because the intent was to focus on challenges to EPA's core work in implementing environmental laws. Likewise, we excluded bankruptcy cases and cases heard in state court unless they were moved to federal court.



To determine if the data were reliable for our purposes, we checked them for completeness and legitimate values. When we were uncertain of the data's accuracy, we requested clarification from the source of the data. Within each database, we checked for duplicate records and either combined data across records into one record or removed unnecessary records. To compile a list of all cases of EPA lawsuits, we needed to identify duplicate cases across the two databases. Because the common field in the two systems—court number—is not kept in the same format, it was necessary for us to standardize court numbers into one format. To do so, we used the standard court number format used in the federal judiciary's Public Access to Court Electronic Records (PACER) system, an electronic public-access service that allows users to obtain case and docket information from federal appellate, district, and bankruptcy courts. After electronically processing reports of matched and unmatched cases, we conducted extensive manual review of the data to (1) confirm that matched cases from the two databases were in fact the same and (2) identify cases that were the same but were still not found with the electronic process. Manual checks of selected individual court cases were performed using the PACER system to correct information, such as EPA's role in the case, the names of plaintiffs, and court numbers.

We analyzed selected data elements—such as plaintiffs' names, filing and disposition dates, and relevant statute—over time to identify any trends in litigation. We also used the data on plaintiffs to identify categories of plaintiffs that have filed suit against EPA. To do this analysis, we used a process known as content analysis, searching national databases for information on each plaintiff and then using this information to code the plaintiffs according to rules developed by our internal team of analysts and specialists in program evaluation methods. Our team created 13 categories into which plaintiffs were coded (see table 3).

**Table 3: Categories of Plaintiffs**

Plaintiff type	Description
Trade association	Represents numerous individual member for-profit companies and businesses
Private company	Privately owned business
Workers' group or labor union	Represents workers' interests; differs from associations
State or territory	State attorneys general, state environmental agencies, and other state government departments or agencies, including U.S. territories or their government offices
Municipal and regional government entity	Cities, counties, and towns, as well as local or regional public water authorities, among others
Tribe	Any Native American tribe or tribal organization
National environmental group	Environmental groups or associations working at the national level—often with one or more local offices or branches. For our purposes, “environment” meant a focus on conservation and improvement of any aspect of the outdoor environment, such as air or water quality and protection of natural resources
Local environmental group	A group without a national parent group that works at the local and regional level
Citizens' group	Civic and social associations, as well as community groups, with an interest in citizen protection, health, or justice issues that are not identified as specifically focused on “environmental” issues
Individual	A private citizen not affiliated with any formal organization
University	Any group named as a college or university
Other	Any other plaintiffs that do not fit into the categories listed above
Unknown	A limited number of plaintiffs for which we were unable to find information, perhaps because those groups no longer existed or had changed their names

Source: GAO.

We evaluated the reliability of our plaintiff categories using two pretests on simple random samples of 40 and 41 plaintiffs, respectively. A minimum of five analysts independently coded the samples to ensure they had a common understanding of the categories and made the same coding decisions. For each pretest, we estimated the analysts' agreement rates adjusted for the possibility of agreement by chance. These “kappa” statistics estimate the reliability of each category. In the first pretest, the analysts agreed 74 percent of the time across all categories and 71 to 91 percent of the time for the individual categories other than “unknown,” using the combined category of “local environmental and citizens' groups.” On the basis of the results of the first pretest, we refined the definitions of the categories and conducted the second pretest. In the subsequent pretest, the analysts agreed 87 percent of the time across all categories and 84 to 95 percent of the time for the individual categories other than “unknown” and “other.” These agreement rates suggested that the analysts could reliably classify the plaintiffs according to common standards in academic literature on intercoder agreement. Classifying the

plaintiffs helped us quantify the number of cases brought each year against EPA by different types of groups.

After validating the categories, we searched in public databases of organizations for information that would allow us to classify each plaintiff. We used the Nexis Encyclopedia of Associations and the Nexis Company Profile data systems, both of which identify organizations by North American Industry Classification System and Standard Industrial Classification. To the extent possible, we used these codes to classify plaintiffs. If these sources were not sufficient, we searched the Web pages of each organization for self-reported information. For the “individual” category of plaintiff, we confirmed through court records that those people were in fact suing as private individuals and not, for example, as mayors or attorneys general of a state. In some cases, insufficient information was available in Justice’s databases to determine a given plaintiff’s identity. In such cases, we looked up the case in the PACER system. Six analysts conducted the content analysis of plaintiffs in the Case Management System and the Legal Information Office Network System. Discrepancies in coding were discussed, and agreement was reached among the analysts or resolved through a group analyst review.

To obtain stakeholder perspectives on environmental litigation trends and the factors that underlie them, we interviewed officials from EPA and Justice; representatives from the offices of five state attorneys general and one state environment department; representatives from six environmental groups; and six industry trade associations. We also spoke with a representative of the National Association of Attorneys General. Additionally, we interviewed one academic expert who has published extensively on environmental litigation in legal journals (see table 4). We selected these representatives on the basis of input from government officials and other interviewees. We asked the interviewees for their perspectives about factors that can affect trends in the types of lawsuits against EPA. We then performed a content analysis to group and summarize their responses. Not all stakeholders provided views on all issues, and statements from our sample of stakeholders cannot be generalized to all groups.

**Table 4: Stakeholders We Interviewed**

<b>Environmental groups</b>
Center for Biological Diversity
Chesapeake Bay Foundation
Earthjustice
Environmental Integrity Project
Natural Resources Defense Council
Sierra Club
<b>Trade associations</b>
American Chemistry Council
American Forest and Paper Association
American Petroleum Institute
National Association of Homebuilders
National Association of Manufacturers
Utility Air Regulatory Group
<b>State officials</b>
California Attorney General's Office
Massachusetts Attorney General's Office
New York Attorney General's Office
Ohio Attorney General's Office
Texas Commission on Environmental Quality
Virginia Attorney General's Office
<b>Other</b>
National Association of Attorneys General
Widener University School of Law

Source: GAO.

To determine Justice's costs for representing EPA in defensive environmental lawsuits and the government's payments to plaintiffs, we obtained data on three components of costs: (1) Justice's costs for its attorneys' time defending EPA, (2) payments for attorney and other costs from the Department of the Treasury's Judgment Fund for some cases that the government lost, and (3) payments for attorney and other costs by EPA for some cases that the government lost. For the first component, we obtained data from Justice on the number of cases per year that involved any of the 10 statutes in our scope, as well as the number of hours Justice attorneys spent working on these cases. To calculate costs, we multiplied the total hours worked in a given year by that year's average hourly pay rate—ranging from \$41 to \$66 per attorney for fiscal

years 1998 through 2010—which we received from Justice. To adjust for uncompensated overtime, we reduced the reported annual hours the attorneys worked by 15 percent, an amount that Justice estimated represents overtime worked by its attorneys. To adjust the attorneys' salaries to include benefits and related agency overhead, we increased the attorneys' salaries by 84.3 percent, a factor that was provided to us by Justice on the basis of its actual 2009 costs. To ensure that attorney costs are comparable across years, we adjusted annual pay rates by applying the consumer price index for all urban consumers from the Department of Labor, Bureau of Labor Statistics, and inflated all pay rates to constant 2010 dollars. When we reported single payments, however, we did not adjust these figures to constant dollar figures.

To determine the second and third components of litigation costs—Treasury's Judgment Fund and EPA's payments to plaintiffs—we obtained and analyzed data from Treasury and EPA. First, we obtained and analyzed data from the Department of the Treasury's Judgment Fund Internet Claims System, which tracks the progress of plaintiffs' claims for Judgment Fund payments from the time they are sent to Treasury until the time they are paid. To identify data on payments related to the environmental statutes in our scope, we matched Treasury's data with data from Justice's two databases and eliminated payments that did not correspond with cases in our scope. When information was determined to be missing, we asked Treasury to provide us with additional information. In particular, we learned that Treasury's data included payments that were issued but were not cashed or were returned; we worked with Treasury to remove these payments to avoid counting these as actual payments and overrepresenting the amount paid from the Judgment Fund. We deleted Superfund cases because we were unable to discern from available information whether the Superfund-related payments were for attorney fees and court costs or for reimbursements of site cleanups, which is a different category of payment than what is within our scope. Similarly, to identify EPA payments to plaintiffs within our scope under the Equal Access to Justice Act, we obtained EPA data on payments made to plaintiffs and manually matched these cases with the cases in Justice's two databases. When certain case information was determined to be missing, we did additional research on these cases using PACER and corrected the data. Inconsistent formatting of key data elements produced significant problems for completing our analysis and required significant manual review by us and Justice. If we did not find the necessary information from available sources, we asked EPA to send us relevant portions of the internal voucher packages used to request payment.

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We conducted this performance audit from June 2010 through July 2011, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Key Provisions and Historical Reporting under the Equal Access to Justice Act

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In the United States, parties involved in litigation generally bear their own attorney fees and costs. For policy reasons, including encouraging citizens to bring suits to enforce the law, Congress has provided exceptions to this rule for cases brought under several statutes, such as the Civil Rights Act. In these instances, as well as some common-law exceptions, a prevailing plaintiff may seek awards of its attorney fees and court costs from the losing party.

Historically, the federal government had sovereign immunity from some of these exceptions, but in some instances, the statutes also waived sovereign immunity so that a court could award fees and costs against the federal government, as well as a private party. According to Justice, many of the key environmental statutes' provisions authorizing award of attorney fees and costs apply to the federal government. For example, EPA pays attorney fees under several provisions of the Clean Air Act and the Clean Water Act.<sup>1</sup>

Furthermore, in 1980, the Equal Access to Justice Act (EAJA) was enacted to waive sovereign immunity for the remaining statutes authorizing award of fees and costs, as well as to authorize the awarding of fees and costs in other cases. As the 1980 conference committee report for EAJA explains, the act's premise is that individuals, corporations, partnerships, and labor and other organizations did not seek review of or defend against unreasonable government actions because of the expense involved, which was compounded by the disparity in expertise and resources between the government and the individual or organization involved. EAJA was intended to help certain individuals, partnerships, corporations, and labor and other organizations by paying the attorney fees and other costs if the federal government brought an administrative or judicial action and lost because the action was not substantially justified. EAJA seeks to (1) encourage parties that are the subject of unreasonable federal government action to seek reimbursement for attorney fees and other costs, (2) restrain overzealous

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<sup>1</sup>See, for example, Clean Air Act, 42 U.S.C. §§ 7604(d), 7607(f) (2011); Clean Water Act, 33 U.S.C. §§ 1365(d), 1369(b)(3) (2011).

regulators, and (3) ensure that the government pays for the cost of refining and formulating public policy.<sup>2</sup>

EAJA authorizes the award of the following:

- Court costs of prevailing parties against the United States in any civil action. These costs may include fees for the clerk and marshal, reporter, printing, witnesses, copies, docket fees, and interpreters and court-appointed experts and may include an amount equal to the filing fees.
- Attorney fees and expenses against the United States of a prevailing party to the same extent as any other party, codified at 28 U.S.C. § 2412(b) and hereinafter referred to as “subsection b.” That is, where there is a statutory or common-law exception that provides for award of fees to a prevailing party, such exceptions also apply to the federal government.<sup>3</sup> Regarding the 10 environmental statutes covered in this report, many of the relevant provisions under which EPA may be sued provide for award of such fees.<sup>4</sup> However, EAJA makes EPA subject to fee awards under all the environmental statutes’ provisions authorizing courts to award attorney fees and expenses. According to Justice, many of the environmental suits against EPA involve provisions that authorize fee awards independent of EAJA, but a small number may fall into EAJA subsection b. A feature of this subsection is that it does not itself limit the eligibility of prevailing plaintiffs, nor expressly limit the hourly rate of attorney fees; however, the statute requires that the fees be “reasonable.” Additionally, any award of fees

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<sup>2</sup>According to some in Congress, parties who choose to litigate an issue against the federal government help refine and formulate public policy by ensuring the legitimacy and fairness of the law being contested. Where policy changes are required, some believe that the costs should be borne by the government.

<sup>3</sup>For example, courts recognize a common-law exception allowing award of attorney fees in instances of bad faith.

<sup>4</sup>Statutes under which the agency may be sued include, but are not limited to, the Clean Air Act; Clean Water Act; Comprehensive Environmental Response, Compensation, and Liability Act (better known as the Superfund law); Emergency Planning and Community Right-to-Know Act; Federal Insecticide, Fungicide, and Rodenticide Act and related provisions of the Federal Food, Drug, and Cosmetic Act; Resource Conservation and Recovery Act; Safe Drinking Water Act; and Toxic Substances Control Act. In addition, EPA may be sued to challenge the agency’s compliance with section 7 of the Endangered Species Act.



made under this section is subject to any limitations that would apply to analogous awards against private parties, as may be provided by the underlying statute.

- Attorney fees and expenses of a prevailing party in cases even when no statutory or common-law exception exists to make a private defendant liable for such fees, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust. This subsection of EAJA, codified at 28 U.S.C. § 2412(d) and hereinafter referred to as “subsection d,” authorized the award of these fees against the federal government in civil court actions,<sup>5</sup> while another subsection authorized the award of these fees in certain agency adjudications such as when a party files an appeal of an agency decision to the EPA Environmental Appeals Board. Two of the 10 laws covered in this report—the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act—as well as some individual provisions of other statutes, do not authorize payment of fees to prevailing parties. Cases brought against EPA under these statutes and provisions, then, fall into EAJA subsection d. This subsection limits the prevailing plaintiff’s eligibility to receive payment by defining an eligible party as, at the time the lawsuit is filed, either an individual with a net worth below \$2 million or a business owner or any partnership, corporation, association, local government, or organization with a net worth below \$7 million and fewer than 500 employees. Tax-exempt nonprofit organizations and certain agricultural marketing cooperatives are considered parties regardless of net worth.

Payment of attorney fees by federal agencies under statutes independently authorizing awards against federal agencies and under subsection b are made from the Judgment Fund, which is a permanent, indefinite appropriation available to pay many money judgments against the United States.<sup>6</sup> Payment of attorney fees by federal agencies under

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<sup>5</sup>EAJA authorized the award of these fees against the federal government in civil court actions, excluding tort cases such as personal injury suits.

<sup>6</sup>The Judgment Fund is not only the source of funds for these payments under this section of EAJA, but it is also used for many other payments stemming from court cases. For example, it is used to pay any court judgments for money against EPA stemming from an employment discrimination case or a contract dispute.

subsection d is generally made from agency appropriations. Table 5 summarizes key attributes of the three authorizing situations under which EPA may pay fees and costs.

**Table 5: Key Attributes of Attorney Fee Payment Provisions Relevant to Judicial Proceedings**

Authorizing statute	Applicability	Limitations	Reporting requirement	Funding for payments
Various provisions of some environmental statutes	—	Varies	No	Judgment Fund
EAJA subsection b	Where statute or common law provides for award of fees against private party	No (any limitations in the statute(s) allowing fees to be awarded apply)	No	Judgment Fund
EAJA subsection d <sup>a</sup>	Where there is no requirement for payment of fees to private parties in law	Yes (hourly rates of attorney fees are limited and restrictions on plaintiffs eligibility for fees)	Yes (repealed)	Agency appropriations

Source: GAO.

<sup>a</sup>A separate section of EAJA, codified at 5 U.S.C. § 504, provides for similar payments in agency adjudications.

Originally, EAJA provided for governmentwide reporting on its use and cost. For judicial proceedings, EAJA required the Director of the Administrative Office of the U.S. Courts to report annually to Congress on EAJA court activity, including the number, nature, and amounts of awards; claims involved; and any other relevant information deemed necessary to aid Congress in evaluating the scope and effect of awards under the act. The responsibility for this reporting was transferred to the Attorney General in 1992. In addition, EAJA required the Chairman of the Administrative Conference of the United States to submit an EAJA report annually to Congress on administratively awarded fees and expenses. Then, in December 1995, the Federal Reports Elimination and Sunset Act of 1995 repealed the Attorney General's reporting requirement for fees and expenses awarded under EAJA and also discontinued reporting of governmentwide administrative awards of fees and costs under EAJA after fiscal year 1994. Currently, there are no statutory requirements in effect for agency or governmentwide reporting of payments made under EAJA for either administrative or judicial proceedings. According to officials from the Administrative Conference of the United States, the conference has begun to obtain and compile such information for fiscal year 2010, noting that there has been continued interest in Congress (including pending legislation) regarding data about payments under

EAJA. Officials told us the conference has requested EAJA data from 50 government agency conference members, as well as a few additional agencies that had previously reported EAJA activity to the conference. The chairman plans to publish a report for fiscal year 2010 later in 2011.

We have previously reported certain governmentwide EAJA data, as well as data focused on selected agencies. In 1996, we reported data on the number of cases and amounts of awarded plaintiff attorneys' fees exceeding \$10,000 against nine federal agencies for cases closed during fiscal years 1993 and 1994.<sup>7</sup> In 1998, we provided information on the history of EAJA, the extent to which one provision of the act was used governmentwide from 1982 to 1994, and the provision's use by the Department of Labor and associated agencies.<sup>8</sup> The governmentwide data showed, among other things, that the Departments of Health and Human Services and of Veterans Affairs accounted for most EAJA payments in court proceedings, under the provision that applies when the substantive law does not authorize award of attorney fees and costs.<sup>9</sup>

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<sup>7</sup>GAO, *Private Attorneys: Selected Attorneys' Fee Awards against Nine Federal Agencies in 1993 and 1994*, [GAO/GGD-96-018](#) (Washington, D.C.: Oct. 31, 1995).

<sup>8</sup>GAO, *Equal Access to Justice Act: Its Use in Selected Agencies*, [GAO/HEHS-98-58R](#) (Washington, D.C.: Jan. 14, 1998).

<sup>9</sup>28 U.S.C. § 2412(d).

# Appendix III: Department of the Treasury and Environmental Protection Agency Payments

This appendix provides data on payments for attorney fees and court costs made by the Department of the Treasury for fiscal year 2003 through fiscal year 2010 and by the Environmental Protection Agency (EPA) for fiscal year 2006 through fiscal year 2010. Payments for attorney fees and expenses and court costs may be made to a plaintiff or directly to a plaintiff's attorney. In cases involving multiple plaintiffs, one or more plaintiffs or their attorneys may receive payment. The first plaintiff named in the case title does not necessarily receive the payment. Table 6 shows payments from the Judgment Fund.

**Table 6: Treasury's Judgment Fund Payments, Fiscal Year 2003 through Fiscal Year 2010**

Date sent	Case title	Payee(s)	Payment amount <sup>a</sup>	Statute
9/29/2010	Louisiana Environmental Action Network v. Jackson	Administrators of the Tulane Educational Fund	\$5,000.00	Clean Air Act
9/27/2010	Sierra Club v. EPA	McGillivray Westerberg	3,223.38	Clean Air Act
9/22/2010	Heal the Bay Inc. v. EPA	Natural Resources Defense Council	17,051.00	Clean Water Act
9/21/2010	Sierra Club v. EPA	Earthjustice Attorney	350.00	Clean Air Act
8/19/2010	National Pork Producers Council and American Farm Bureau v. EPA	Waterkeeper Alliance	25,447.53	Clean Water Act
8/19/2010		Natural Resources Defense Council	69,552.47	Clean Water Act
8/17/2010	Sierra Club v. Jackson	IOLTA Law Office of Robert Ukeiley, PSC <sup>b</sup>	8,000.00	Clean Air Act
8/3/2010	Sierra Club v. EPA	Earthjustice Attorney	11,019.57	Clean Air Act
7/14/2010	Sierra Club v. EPA	McGillivray Westerberg	2,624.71	Clean Air Act
7/13/2010	Northwest Environmental Defense Center et al. v. U.S. Environmental Protection Agency et al.	Pacific Environmental Advocacy Center Attorney Escrow Account/IOLTA	40,000.00	Endangered Species Act
7/8/2010	Environmental Integrity Project v. Jackson	Vermont Law School Inc.	8,000.00	Clean Air Act
6/25/2010	Natural Resources Defense Council v. EPA	Earthjustice Attorney	198,700.00	Clean Air Act
6/22/2010	Florida Wildlife Federation v. EPA	Earthjustice Florida	198,997.00	Clean Water Act
6/11/2010	WildEarth Guardians v. EPA	IOLTA Law Office of Robert Ukeiley, PSC	16,000.00	Clean Air Act
5/25/2010	The National Cotton Council of America v. EPA	Western Environmental Law Center	500,000.00	Clean Water Act
5/24/2010	State of New Jersey v. EPA	Clean Air Act Task Force	400,000.00	Clean Air Act
3/12/2009		Earthjustice Attorney	2,710.96	Clean Air Act
5/19/2010	State of New York v. EPA	Earthjustice Attorney	95,000.00	Clean Air Act
11/16/2009		Earthjustice Attorney	1,476.21	Clean Air Act

**Appendix III: Department of the Treasury and  
Environmental Protection Agency Payments**

<b>Date sent</b>	<b>Case title</b>	<b>Payee(s)</b>	<b>Payment amount<sup>a</sup></b>	<b>Statute</b>
4/28/2010	WildEarth Guardians v. EPA	WildEarth Guardians	3,520.00	Clean Air Act
4/28/2010	Comite Civico Del Valle Inc. v. Jackson	Law Office of Gideon Kracov	33,000.00	Clean Air Act
4/28/2010	Association of Irrigated Residents v. EPA	Center on Race, Poverty, and the Environment	16,500.00	Clean Air Act
3/23/2010	WildEarth Guardians v. EPA	WildEarth Guardians	4,588.50	Clean Air Act
3/22/2010	WildEarth Guardians v. Jackson	Robert Ukeiley, PSC IOLTA	22,420.00	Clean Air Act
3/10/2010	Mossville Environmental Action Now v. EPA	Earthjustice Attorney	8,000.00	Clean Air Act
3/4/2010	WildEarth Guardians v. Jackson	Earthjustice	16,000.00	Clean Air Act
3/3/2010	Desert Rock and Dine Power Authority v. EPA	Ater Wynne, LLP IOLTA and Oregon Law Foundation	20,971.12	Clean Air Act
3/3/2010	Sierra Club v. EPA	Tom Neltner	65,489.00	Toxic Substances Control Act
3/3/2010	New York Coalition to End Lead Poisoning v. EPA	Northern Manhattan Improvement Corporation	62,393.00	Toxic Substances Control Act
2/25/2010	Environmental Integrity Project v. Jackson	Environmental Integrity Project	6,312.83	Clean Air Act
2/24/2010	Sierra Club v. Jackson	McGillivray Westerberg	2,847.64	Clean Air Act
1/27/2010	Sierra Club v. Jackson	Robert Ukeiley, PSC IOLTA	4,000.00	Clean Air Act
1/14/2010	Florida Clean Water Act Network v. EPA	Law Office of David A. Ludder PLLC	13,634.50	Clean Water Act
12/17/2009	Sierra Club v. Johnson	McGillivray Westerberg	4,901.26	Clean Air Act
12/8/2009	Sierra Club v. EPA	Earthjustice Attorney	3,314.48	Clean Air Act
11/24/2009	Colorado Citizens Against Toxic Waste v. EPA	Colorado Lawyer Trust	27,427.50	Clean Air Act
11/16/2009	Association of Irrigated Residents v. EPA	Center on Race, Poverty, and the Environment	11,500.00	Clean Air Act
11/13/2009	Sierra Club v. EPA	Earthjustice Attorney	1,150.00	Clean Air Act
10/30/2009	Sierra Club v. Stephen Johnson	Sierra Club	21,311.00	Clean Air Act
10/8/2009	Sierra Club v. EPA	Reed Zars	31,140.00	Clean Air Act
10/5/2009	Sierra Club v. EPA	McGillivray Westerberg	2,057.54	Clean Air Act
9/28/2009	American Farm Bureau Federation v. EPA	Earthjustice Attorney	209,867.00	Clean Air Act
9/22/2009		Earthjustice Attorney	1,360.44	Clean Air Act
9/24/2009	Center for Biological Diversity v. Johnson	Robert Ukeiley, PSC	22,500.00	Clean Air Act
9/22/2009	WildEarth Guardians v. Johnson	Robert Ukeiley, PSC	4,884.00	Clean Air Act
8/6/2009	Environmental Integrity Project v. EPA	Earthjustice Main Account	67,587.80	Clean Air Act

**Appendix III: Department of the Treasury and  
Environmental Protection Agency Payments**

<b>Date sent</b>	<b>Case title</b>	<b>Payee(s)</b>	<b>Payment amount<sup>a</sup></b>	<b>Statute</b>
8/5/2009	Sierra Club v. Johnson	Sierra Club	5,000.00	Toxic Substances Control Act
6/23/2009	Sierra Club v. EPA	McGillivray Westerberg	2,787.06	Clean Air Act
6/16/2009	Friends of Pinto Creek v. EPA	Western Mining Action	162,347.91	Clean Water Act
6/12/2009	State of North Carolina v. EPA	Minnesota Power	100,000.00	Clean Air Act
6/11/2009	Environmental Integrity Project v. EPA	Environmental Integrity Project	4,500.00	Clean Air Act
5/11/2009		Environmental Integrity Project	4,500.00	Clean Air Act
5/4/2009	Natural Resources Defense Council v. EPA	Earthjustice Attorney	163,500.00	Clean Air Act
5/1/2009	Rocky Mountain Clean Air Action v. Johnson	John M. Barth	8,526.02	Clean Air Act
4/2/2009	Natural Resources Defense Council v. EPA	New York State Department of Law	144.90	Clean Water Act
3/25/2009		Patterson Belknap Webb & Tyler, LLP	800.40	Clean Water Act
3/24/2009		Patterson Belknap Webb & Tyler, LLP	720,000.00	Clean Water Act
3/17/2009	Natural Resources Defense Council v. EPA	Natural Resources Defense Council	117,125.00	Clean Water Act
1/5/2009		Natural Resources Defense Council	628.70	Clean Water Act
2/17/2009	Northwest Environmental Advocates v. EPA	Northwest Environmental Advocates	60,000.00	Clean Water Act
2/10/2009	Commonwealth of Massachusetts v. EPA	Commonwealth of Massachusetts	127,555.00	Clean Air Act
1/23/2009		Sierra Club	93,205.00	Clean Air Act
1/12/2009		Lisa Heinzerling	100,000.00	Clean Air Act
12/15/2008		State of California Air Resources Board	111,277.00	Clean Air Act
12/15/2008		International Center for Technology Assessment	81,438.00	Clean Air Act
12/15/2008		City of New York	28,841.00	Clean Air Act
12/12/2008		Michael C. MacCracken	11,045.00	Clean Air Act
12/12/2008		Natural Resources Defense Council	54,002.00	Clean Air Act
12/12/2008		Earthjustice Main Account	92,637.00	Clean Air Act
2/5/2009	Communities for a Better Environment v. EPA	IOLTA Law Office of Robert Ukeiley, PSC	65,000.00	Clean Air Act
2/2/2009	Natural Resources Defense Council v. Johnson	Los Angeles County Flood Control District	201,000.00	Clean Water Act
1/14/2009		National Association of Clean Water Agencies	95,000.00	Clean Water Act
1/14/2009		Natural Resources Defense Council	498,000.00	Clean Water Act

**Appendix III: Department of the Treasury and  
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<b>Date sent</b>	<b>Case title</b>	<b>Payee(s)</b>	<b>Payment amount<sup>a</sup></b>	<b>Statute</b>
1/5/2009	Association of Irrigated Residents v. EPA	Center on Race, Poverty, and the Environment	33,815.00	Clean Air Act
12/31/2008		Natural Resources Defense Council	10,751.00	Clean Air Act
12/29/2008	South Coast Air Quality Management District v. EPA	Earthjustice Main Account	240,000.00	Clean Air Act
8/1/2008	Sierra Club v. EPA	Garvey McNeil & McGillivray	7,250.00	Clean Air Act
5/22/2008	Rocky Mountain Clean Air Action v. EPA	Robert Ukeiley, PSC	25,000.00	Clean Air Act
5/13/2008	Sierra Club V. EPA	Earthjustice Attorney	110,000.00	Clean Air Act
5/1/2008	Rocky Mountain Clean Air Action v. Johnson	Robert Ukeiley, PSC	5,283.28	Clean Air Act
3/20/2008	Sierra Club v. EPA	A.G. Edwards and Sons	7,843.00	Clean Air Act
2/26/2008	State of New York v. EPA	Earthjustice Inc.	198,000.00	Clean Air Act
9/14/2006		Earthjustice Legal Services	2,745.44	Clean Air Act
2/22/2008	Center for Biological Diversity v. Johnson	Robert Ukeiley, PSC	55,145.00	Clean Air Act
2/22/2008	Sierra Club v. EPA	Garvey McNeil & McGillivray	6,500.00	Clean Air Act
2/22/2008	Environmental Defense Inc. v. EPA	Sierra Club	945.69	Clean Air Act
2/11/2008	Public Employees for Environmental Responsibility v. Johnson	Public Employees for Environmental Responsibility	40,000.00	Toxic Substances Control Act
12/5/2007	Sierra Club v. EPA	Sierra Club	3,454.66	Clean Air Act
12/4/2007	Sierra Club v. EPA	Account for Reed Zars	14,360.00	Clean Air Act
12/4/2007	Our Children's Earth Foundation v. EPA	Golden Gate University School of Law	18,000.00	Clean Air Act
11/29/2007	South Coast Air Quality Management District v. EPA	Earthjustice Attorney	2,353.62	Clean Air Act
11/27/2007	Sierra Club v. Johnson	McNeil & McGillivray, S.C. IOLTA	4,898.00	Clean Air Act
11/27/2007	State of New Jersey v. EPA	New Jersey Department of Environmental Protection	3,700.00	Clean Air Act
11/27/2007	Natural Resources Defense Council v. EPA	Natural Resources Defense Council	2,077.17	Clean Air Act
10/26/2007	American Lung Association of Metropolitan Chicago v. EPA	Environmental Law and Policy Center	3,075.00	Clean Air Act
10/25/2007	People for the State of Illinois v. EPA	State of Illinois	7,621.00	Clean Air Act
10/25/2007	Citizens Against Ruining the Environment v. EPA	Chicago Legal Clinic	3,075.00	Clean Air Act
10/18/2007	Sierra Club v. EPA	Earthjustice Attorney Client Trust Fund	190,000.00	Clean Air Act
9/27/2007	Natural Resources Defense Council v. EPA	Earthjustice	4,472.74	Clean Air Act

**Appendix III: Department of the Treasury and  
Environmental Protection Agency Payments**

<b>Date sent</b>	<b>Case title</b>	<b>Payee(s)</b>	<b>Payment amount<sup>a</sup></b>	<b>Statute</b>
9/1/2007	Sierra Club v. EPA	Earthjustice Attorney Client Trust Account	1,630.18	Clean Air Act
8/22/2007	Rocky Mountain Clean Air Act Act Action v. Johnson	Robert Ukeiley, PSC	9,536.00	Clean Air Act
8/21/2007	Safe Air for Everyone v. EPA	Earthjustice Main Account	133,512.05	Clean Air Act
8/20/2007		Earthjustice Main Account	974.30	Clean Air Act
8/13/2007	Sierra Club v. EPA	Sierra Club	25,000.00	Toxic Substances Control Act
8/8/2007	Baykeeper v. EPA	Environmental Advocates Attorney Client Trust Account/IOLTA	125,000.00	Clean Water Act
7/19/2007	Idaho Conservation League v. Johnson	Robert Ukeiley, PSC	4,945.00	Clean Air Act
6/23/2007	Coralations v. EPA	Mid-Atlantic Environmental Law Center	95,388.40	Clean Water Act
5/22/2007	Sierra Club and Coosa River Basin Initiative v. EPA	Georgia Center for Law and the Public Interest	12,000.00	Clean Air Act
5/4/2007	Honeywell International Inc. v. EPA	Gomar National Industries	150,000.00	Clean Air Act
11/26/2004		Sidley Austin Brown & Wood LLP	956.74	Clean Air Act
4/24/2007	State of New York v. EPA	Mid-Atlantic Environmental Law Center	5,000.00	Clean Air Act
3/10/2007		Earthjustice Legal Services Trust	2,374.80	Clean Air Act
12/7/2006		Earthjustice Legal Services Trust	98,837.65	Clean Air Act
4/13/2007	Center for Biological Diversity v. Christie Whitman et al.	Michael W. Graf	405,000.00	Endangered Species Act
2/28/2007	Elmwood Park et al. v. Stephen Johnson et al.	Rutgers Environmental Law Clinic	1,900.00	Clean Air Act
1/17/2007	American Canoe Association Inc. v. EPA	John M. Simpson	2,398.00	Clean Water Act
11/20/2006	Medical Advocates for Healthy Air v. EPA	Earthjustice Main	83,134.11	Clean Air Act
11/15/2006	Kentuckians for the Commonwealth v. EPA	Robert Ukeiley, PSC	16,092.00	Clean Air Act
9/6/2006	Sierra Club v. EPA	Earthjustice Legal Services	67,550.00	Clean Air Act
8/30/2006	South Jersey Environmental v. Stephen Johnson, EPA	Eastern Environmental Law Center	1,871.00	Clean Air Act
7/31/2006	Louisiana Environmental Action Network v. Johnson	Administrators of the Tulane Educational Fund	1,306.50	Clean Air Act
7/12/2006	Environmental Integrity Project v. EPA	Earthjustice Legal Services	93,000.00	Clean Air Act
3/30/2006		Earthjustice Attorney Client Trust Account	1,732.21	Clean Air Act



**Appendix III: Department of the Treasury and  
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<b>Date sent</b>	<b>Case title</b>	<b>Payee(s)</b>	<b>Payment amount<sup>a</sup></b>	<b>Statute</b>
6/20/2006	Washington Toxics Coalition et. al. v. EPA	Earthjustice Attorney Client Trust Account	625,602.40	Endangered Species Act
5/26/2006	South Jersey Environmental Justice Alliance v. Johnson	Eastern Environmental Law Center	5,502.00	Clean Air Act
5/4/2006	Sierra Club v. Johnson	Robert Ukeiley, PSC	6,800.00	Clean Air Act
4/26/2006	Our Children's Earth Foundation v. EPA	Our Children's Earth Legal Fund	14,123.34	Clean Air Act
4/21/2006	Sierra Club v. EPA	FBO Georgia Center for Law in the Public Interest	45,000.00	Clean Air Act
4/19/2006	Natural Resources Defense Council v. EPA	Natural Resources Defense Council	140,000.00	Endangered Species Act
3/23/2006	Sierra Club V. EPA	Sierra Club	3,036.66	Clean Air Act
10/27/2005	Mossville Environmental Action Now v. EPA	Earthjustice Attorney	94,500.00	Clean Air Act
10/25/2005	Sierra Club v. Johnson	Sierra Club	11,981.86	Clean Air Act
10/25/2005	Blue Skies Alliance v. Leavitt	Marc Chyttilo	45,000.00	Clean Air Act
10/7/2005	Sailors Inc. and Mississippi River Revival v. EPA	Jerry L. Anderson	11,000.00	Clean Water Act
9/19/2005	Environmental Defense v. Johnson	Southern Environmental Law Center	31,000.00	Clean Air Act
9/19/2005	Sierra Club v. Leavitt	Earthjustice	32,923.38	Clean Air Act
9/8/2005	National Wildlife Federation v. EPA	National Wildlife Federation	62,128.00	Clean Air Act
9/1/2005	Center for Biological Diversity et al. v. Environmental Protection Agency	Save Our Springs Alliance	53,000.00	Endangered Species Act
8/17/2005	Waterkeeper Alliance v. EPA	Waterkeeper Alliance Inc.	415,145.00	Clean Water Act
6/29/2005		Crowell & Moring Master	220,141.34	Clean Water Act
7/26/2005	Martha Vigil v. EPA	Arizona Center for Law in the Public Interest	30,957.75	Clean Air Act
7/14/2005	American Lung Association of Metropolitan Chicago v. EPA	Sierra Club	3,570.00	Clean Air Act
7/13/2005		Environmental Law and Policy Center	24,585.00	Clean Air Act
6/22/2005		Chicago Legal Clinic Inc. Clients' Fund	18,480.00	Clean Air Act
6/9/2005		Earthjustice	18,214.00	Clean Air Act
2/26/2004	American Lung Association V. EPA	Earthjustice	23,000.00	Clean Air Act
6/9/2005		Earthjustice	6,650.00	Clean Air Act
12/30/2003		Earthjustice	78,500.00	Clean Air Act
5/12/2005	Bluewater Network v. EPA	Earthjustice Attorney Client Trust Account	45,406.21	Clean Air Act
4/28/2005	Sierra Club v. Whitman	Earthjustice	11,800.00	Clean Air Act
4/7/2005	Glynn Environmental Coalition Inc. v. EPA	Legal Environmental Assistance Foundation	7,908.64	Clean Air Act

**Appendix III: Department of the Treasury and  
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<b>Date sent</b>	<b>Case title</b>	<b>Payee(s)</b>	<b>Payment amount<sup>a</sup></b>	<b>Statute</b>
3/30/2005	Sierra Club v. EPA	Earthjustice	53,920.80	Clean Air Act
6/17/2004		Earthjustice	1,347.96	Clean Air Act
3/25/2005	New York Public Interest Research Group v. Whitman	Morningside Heights Legal Services	35,000.00	Clean Air Act
3/25/2005	Environmental Defense v. Horinko	Earthjustice	22,276.00	Clean Air Act
2/20/2005	Louisiana Environmental Action Network v. Leavitt	The Administrators of the Tulane Educational Fund	1,641.50	Clean Air Act
1/25/2005	Missouri Coalition for the Environment v. Leavitt	Missouri Coalition for the Environment	88,198.79	Clean Water Act
12/29/2004	Environmental Defense v. EPA	Reed Zars	49,430.00	Clean Air Act
12/11/2004	Louisiana Environmental Action Network v. EPA	The Administrators of the Tulane Educational Fund	129,066.99	Clean Air Act
10/27/2004	Sierra Club v. EPA	Earthjustice	91,000.00	Clean Air Act
11/18/2003		Earthjustice	1,006.40	Clean Air Act
9/30/2004	Our Children's Earth Foundation v. EPA	Golden Gate University School of Law	30,000.00	Clean Air Act
9/30/2004	Sierra Club v. EPA	FBO Georgia Center for Law in the Public Interest	31,132.60	Clean Air Act
9/25/2004	Our Children's Earth Foundation v. EPA	Environmental Advocates	70,000.00	Clean Water Act
7/26/2004	Environmental Defense Center v. EPA	Paul Weiss Rifkind Wharton & Garrison	219,000.00	Clean Water Act
7/6/2004	Riverkeeper Inc. v. EPA	Riverkeeper Inc.	98,000.00	Clean Water Act
6/16/2004	Environmental Defense Fund and Natural Resources Defense Council v. EPA	Robert E. Yuhnke & Associates	27,000.00	Clean Air Act
6/8/2004	Sierra Club v. Leavitt	FBO Georgia Center for Law in the Public Interest	20,000.00	Clean Air Act
5/10/2004	Our Children's Earth Foundation v. EPA	Golden Gate University School of Law	4,500.00	Clean Air Act
4/30/2004	Medical Advocates for Healthy Air v. Whitman	Earthjustice Legal Defense Fund	199,622.98	Clean Air Act
4/12/2004	Sierra Club and New York Public Interest Research Group Inc v. EPA	Earthjustice	49,500.00	Clean Air Act
4/6/2004	Save the Valley Inc. v. EPA	Save the Valley Inc.	45,600.64	Clean Water Act
3/24/2004	Association of Irrigated Residents v. EPA	Earthjustice Attorney	50,620.00	Clean Air Act
2/17/2004		California Rural Legal Assistance Foundation	5,320.50	Clean Air Act
3/22/2004	Our Children's Earth Foundation and Sierra Club v. EPA	Reed Zars	155,000.00	Clean Air Act

**Appendix III: Department of the Treasury and  
Environmental Protection Agency Payments**

<b>Date sent</b>	<b>Case title</b>	<b>Payee(s)</b>	<b>Payment amount<sup>a</sup></b>	<b>Statute</b>
2/27/2004	Defenders of Wildlife et al. v. United States Environmental Protection Agency	Belin and Sugarman	26,526.96	Endangered Species Act
2/5/2004	Louisiana Environmental Action Network v. EPA	Administrators of the Tulane Educational Fund	3,200.00	Clean Air Act
2/3/2004	Bluewater Network v. EPA	Earthjustice	85,542.00	Clean Air Act
12/15/2003	International Center for Technology Assessment v. Whitman	International Center for Technology Assessment	29,000.00	Clean Air Act
11/5/2003	Southern Organizing Committee for Economic and Social Justice v. EPA	Southern Environmental Law Center	120,000.00	Clean Air Act
8/22/2003	Sierra Club v. Whitman	Georgia Center for Law in the Public Interest	14,464.48	Clean Air Act
7/25/2003	Kansas Natural Resource Council Inc. v. Browner	John M. Simpson PC	38,270.00	Clean Water Act
7/25/2003		Charles Benjamin Inc.	17,925.00	Clean Water Act
6/30/2003	New York Public Interest Research Group v. Whitman	Earthjustice	15,251.52	Clean Air Act
6/23/2003	Sierra Club v Whitman	Earthjustice	22,490.00	Clean Air Act
6/19/2003	Juanita Stewart v. Whitman	Administrators of the Tulane Educational Fund	150.00	Clean Air Act
6/18/2003	New York Public Interest Research Group v. EPA	New York Public Interest Research Group	3,004.90	Clean Air Act
5/5/2003	Sierra Club v. EPA	Earthjustice	145,669.00	Clean Air Act
10/17/2002		Earthjustice Legal Defense Fund	726.78	Clean Air Act
4/30/2003	Sierra Club and Missouri Coalition for the Environment v. EPA	Green Hennings & Henry	66,146.38	Clean Air Act
4/30/2003	American Corn Growers Association v. EPA	Western Fuels Association Inc.	22,000.00	Clean Air Act
4/30/2003		Center for Energy and Economic Development	182,000.00	Clean Air Act
4/24/2003	Sierra Club v. EPA	Earthjustice	41,584.00	Clean Air Act
4/21/2003	Sierra Club v. EPA	Marc Chytilo	77,000.00	Clean Air Act
4/2/2003	South Coast Air Quality Management District v. EPA	Los Angeles County Treasurer	102,000.00	Clean Air Act
3/4/2003	Communities for a Better Environment v. EPA	Environmental Law and Justice Clinic	36,491.00	Clean Air Act
1/28/2003	Natural Resources Defense Council v. Browner	Earthjustice	14,909.00	Clean Air Act
12/21/2002	Sierra Club and Louisiana Environmental Action Network Inc. v. Gregg A. Cooke	Earthjustice Attorney Client Trust Account	496,375.61	Clean Water Act
12/20/2002	Mineral County v. EPA	Western Environmental Law Center	35,000.00	Clean Water Act

**Appendix III: Department of the Treasury and  
Environmental Protection Agency Payments**

<b>Date sent</b>	<b>Case title</b>	<b>Payee(s)</b>	<b>Payment amount<sup>a</sup></b>	<b>Statute</b>
12/17/2002	American Littoral Society v. EPA	Mid-Atlantic Environmental Law Center	75,000.00	Clean Water Act
11/13/2002	Defend the Bay Inc. v. Marcus	Natural Resources Defense Council	57,500.00	Clean Water Act
10/30/2002	Sierra Club and Group Against Smog and Pollution v. EPA	Earthjustice Legal Defense Fund	125,000.00	Clean Air Act
10/30/2002	American Trucking Associations v. EPA	Utility Air Resources Group Escrow Account	92,250.00	Clean Air Act
10/8/2002	Environmental Defense Fund v. EPA	Blackburn Carter, PC	51,630.76	Clean Air Act
10/7/2002	Midwest Ozone Group v. EPA	Jackson & Kelley, PLLC	22,000.00	Clean Air Act
10/4/2002	Californians for Alternatives for Toxics et al. v. Environmental Protection Agency	Brian Gaffney	56,500.00	Endangered Species Act

Source: GAO analysis of Treasury Department data.

<sup>a</sup>Table data have not been adjusted for inflation.

<sup>b</sup>IOLTA stands for "interest on lawyers' trust accounts." According to IOLTA.org, a lawyer who receives funds that belong to a client, such as retainers or advance payments, must place those funds in a trust account separate from the lawyer's own money; these are known as IOLTA accounts.

In addition to payments from the Judgment Fund, EPA made payments under EAJA to successful plaintiffs. Table 7 shows payments made by EPA for fiscal year 2006 through fiscal year 2010.

**Table 7: EPA's Equal Access to Justice Act Payments, Fiscal Year 2006 through Fiscal Year 2010**

<b>Payment date</b>	<b>Case title</b>	<b>Payee(s)</b>	<b>Payment amount<sup>a</sup></b>	<b>Statute<sup>b</sup></b>
5/27/2010	Richard J. Weisberg v. EPA	Richard J. Weisberg	\$1,178	Clean Water Act
4/8/2010	Center for Biological Diversity v. EPA	Center for Biological Diversity	18,000	Clean Water Act
9/29/2010	United Farm Workers of America v. EPA	United Farm Workers of America	230,000	Federal Insecticide, Fungicide, and Rodenticide Act
9/28/2009	Northwest Environmental Advocates v. EPA	Northwest Environmental Advocates <sup>c</sup>	465,000	Clean Water Act
5/21/2009	Kentucky Waterways Alliance v. Leavitt	Kentucky Waterways Alliance	147,638	Clean Water Act
11/19/2008	Sierra Club v. EPA	Sierra Club Environmental Law Program/Mid-Atlantic Environmental Law Center	169,000	Clean Water Act
7/18/2008	Klamath Riverkeeper v. EPA	Klamath Riverkeeper	65,459	Clean Water Act
12/11/2007	National Wildlife Federation v. EPA	National Wildlife Federation	27,273	Clean Water Act
10/15/2007	Friends of the Earth v. EPA	Friends of the Earth	99,660	Clean Water Act

**Appendix III: Department of the Treasury and  
Environmental Protection Agency Payments**

<b>Payment date</b>	<b>Case title</b>	<b>Payee(s)</b>	<b>Payment amount<sup>a</sup></b>	<b>Statute<sup>b</sup></b>
10/12/2007	Ohio Valley Environmental Coalition Inc. v. Johnson	Ohio Valley Environmental Coalition Inc.	2,805	Clean Water Act
9/18/2006	Iowa Environmental Council et al. v. Steven Johnson et al.	Iowa Environmental Council	8,414	Clean Water Act
7/24/2006	West Harlem Environmental Action v. EPA	West Harlem Environmental Action and National Resources Defense Council	72,000	Federal Insecticide, Fungicide, and Rodenticide Act
4/17/2006	St. Johns Riverkeeper and Linda Young v. EPA	St. Johns Riverkeeper	19,801	Clean Water Act
12/14/2005	Minnesota Center for Environmental Advocacy v. EPA	Minnesota Center for Environmental Advocacy	45,000	Clean Water Act

Source: GAO analysis of EPA data.

<sup>a</sup>These data have not been adjusted for inflation.

<sup>b</sup>Statute indicates the statute related to the EPA action being challenged. In some instances, the Administrative Procedure Act, rather than the statute listed, authorizes the lawsuit.

<sup>c</sup>One payment, the 2009 payment to the Northwest Environmental Advocates, is associated with two cases.

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

David C. Trimble, (202) 512-3841 or [trimbled@gao.gov](mailto:trimbled@gao.gov)

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## Staff Acknowledgments

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