

GAO Highlights

Highlights of [GAO-15-34](#), a report to congressional requesters

Why GAO Did This Study

Laws, such as the Clean Air Act, require EPA to issue rules by specific deadlines. Citizens can sue EPA for not issuing rules on time. These lawsuits are sometimes known as deadline suits. EPA sometimes negotiates a settlement to issue a rule by an agreed upon deadline. Some have expressed concern that the public is not involved in the negotiations and that settlements affect EPA rulemaking priorities. GAO was asked to review EPA settlements in deadline suits. This report examines (1) key environmental laws that allow deadline suits and the factors EPA and DOJ consider in determining whether to settle these suits, (2) the terms of settlements that led EPA to issue major rules in the last 5 years and the extent to which the public commented on the settlements, and (3) the extent to which settlements in deadline suits have affected EPA's rulemaking priorities.

GAO identified key laws allowing deadline suits through legal research and interviewed agency officials to understand the factors considered in determining whether to settle these suits. EPA identified the major rules it issued following settlements and GAO examined the text of those settlements. GAO examined EPA documentation to determine the extent to which the public commented on the settlements. Through data from EPA's Office of General Counsel and discussions with officials, GAO determined the extent to which settlements affected EPA's rulemaking priorities.

What GAO Recommends

GAO is not making any recommendations in this report. DOJ and EPA concur with GAO's findings.

View [GAO-15-34](#). For more information, contact J. Alfredo Gómez at (202) 512-3841 or gomezj@gao.gov.

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ENVIRONMENTAL LITIGATION

Impact of Deadline Suits on EPA's Rulemaking Is Limited

What GAO Found

GAO identified seven key environmental laws that allow citizens to file a deadline suit against the Environmental Protection Agency (EPA) (see table) and EPA and the Department of Justice (DOJ) consider several factors in determining whether or not to settle these suits. The seven key environmental laws include, among others, the Clean Air Act and the Clean Water Act. EPA works with DOJ—which represents EPA in litigation—to decide whether to settle a deadline suit. EPA and DOJ officials stated that the factors they consider include (1) the cost of litigation, (2) the likelihood that EPA will win the case if it goes to trial, and (3) whether EPA and DOJ believe they can negotiate a settlement that will provide EPA with sufficient time to complete a final rule if required to do so.

Of the total number of major rules EPA promulgated from May 31, 2008 to June 1, 2013, nine were issued following seven settlements in deadline lawsuits, all under the Clean Air Act. The terms of the settlements in these deadline suits established a schedule to issue a statutorily required rule(s) or to issue a rule(s) unless EPA determined that doing so was not appropriate or necessary pursuant to the relevant statutory provision. None of the seven settlements included terms that finalized the substantive outcome of a rule. The Clean Air Act requires EPA to solicit public comments on drafts of settlements. The nine major rules were Clean Air Act rules, and EPA solicited public comments on all of the drafts. EPA received between 1 and 19 comments on six of the settlements and no comments on one settlement. EPA determined that none of the comments disclosed facts or other considerations compelling it to withdraw or withhold consent for the settlement.

The effect of settlements in deadline suits on EPA's rulemaking priorities is limited. According to EPA officials, settlements in deadline suits primarily affect a single office within EPA—the Office of Air Quality Planning and Standards (OAQPS)—because most deadline suits are based on provisions of the Clean Air Act for which that office is responsible. These provisions have recurring deadlines requiring EPA to set standards and to periodically review—and revise as necessary—those standards. OAQPS sets these standards through the rulemaking process. OAQPS officials said that deadline suits affect the timing and order in which rules are issued but not which rules are issued.

Key Environmental Laws That Allow Citizens to File Deadline Suits

Statute
Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601-9675)
Clean Air Act (42 U.S.C §§ 7401-7671q)
Clean Water Act (33 U.S.C. §§ 1251-1388)
Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001-11050)
Safe Drinking Water Act (42 U.S.C. §§ 300f-300j-26)
Resource Conservation and Recovery Act (42 U.S.C. §§ 6901-6992k)
Toxic Substances Control Act (15 U.S.C. §§ 2601-2697)

Source: GAO. | GAO-15-34