

# GAO Highlights

Highlights of [GAO-15-803T](#), a testimony before the Subcommittee on Superfund, Waste Management, and Regulatory Oversight, Committee on Environment and Public Works, U.S. Senate

## Why GAO Did This Study

Environmental statutes, such as the Clean Air Act and Clean Water Act, allow citizens to file suit against EPA to challenge certain agency actions, such as issuing regulations or rules. Such laws also require EPA to take certain actions, such as issuing rules, to implement provisions of the law within certain statutorily designated time frames. Citizens can sue EPA to compel the agency to take required actions, such as issuing a rule on time, in lawsuits often called deadline suits. EPA can negotiate a settlement to issue a rule by an agreed upon deadline.

Where EPA is named as a defendant, Justice provides EPA's legal defense. If successful, plaintiffs may be paid for certain attorney fees and costs. Payments are made from Treasury's Judgment Fund or EPA's appropriations.

Under the Endangered Species Act, FWS also faces lawsuits over its regulations and actions to carry out the act. As with EPA, Justice defends suits against FWS in court.

This testimony is based on GAO reports issued from August 2011 through December 2014 about litigation directed at EPA and FWS. It focuses on (1) information on cases and associated costs, as available, for EPA and FWS and (2) information on the impact of deadline cases on EPA rulemaking.

GAO did not make recommendations in the reports on which this testimony is based and is not making any in this testimony.

View [GAO-15-803T](#). For more information, contact J. Alfredo Gómez at (202) 512-3841 or [gomezj@gao.gov](mailto:gomezj@gao.gov).

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## ENVIRONMENTAL LITIGATION

### Information on Cases against EPA and FWS, and on Deadline Suits on EPA Rulemaking

## What GAO Found

As GAO reported in August 2011, the Environmental Protection Agency (EPA) faces legal challenges implementing the nation's key environmental laws. The number of environmental litigation cases brought against EPA each year for fiscal years 1995 through 2010 varied with no discernible trend. Data available from the Department of Justice, the Department of the Treasury, and EPA show that the costs associated with such cases against EPA have also varied from year to year with no discernible trend. Specifically,

- Justice staff defended EPA on an average of about 155 such cases each year from fiscal years 1995 through 2010, for a total of about 2,500 cases during that time. 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 administrations, new regulations or amendments to laws or EPA's not meeting statutorily required deadlines—affected environmental litigation.
- Justice spent at least \$46.9 million, averaging \$3.6 million annually, to defend EPA in court from fiscal years 1998 through 2010. In addition, owing to statutory requirements to pay certain successful plaintiffs for attorney fees and costs, the Treasury paid about \$15.5 million from fiscal years 2003 through 2010—averaging about \$2 million per fiscal year—to plaintiffs in environmental cases. EPA paid approximately \$1.5 million from fiscal years 2006 through 2010—averaging about \$305,000 per fiscal year—to plaintiffs for environmental litigation claims. (All amounts are in constant 2015 dollars.)

As one of the primary agencies responsible for implementing the Endangered Species Act, the U.S. Fish and Wildlife Service (FWS) faces litigation over its regulations and actions to carry out provisions of the act. In April 2012, GAO reported that FWS did not use a data system to track cases and associated fees and costs it paid. As a result, information regarding cases against FWS and associated costs was limited, with FWS data showing that the agency paid about \$1.6 million in 26 cases from fiscal years 2004 through 2010.

As GAO reported in December 2014, of the 32 major rules that EPA stated it 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 impact of settlements in deadline suits on EPA's rulemaking priorities was limited primarily to one 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.