



Highlights of [GAO-09-656](#), a report to congressional requesters

## Why GAO Did This Study

Under the Superfund program, the Environmental Protection Agency (EPA) places the most seriously contaminated sites on the National Priorities List (NPL). EPA may compel site cleanups by parties responsible for contamination, or conduct cleanups itself and have these parties reimburse its costs. The program is funded by a trust fund, which is largely supported by general fund appropriations. GAO was asked to examine (1) EPA's enforcement action outcomes and the factors parties consider in reaching these outcomes; (2) any trends in litigation to resolve Superfund liability; and (3) the program's status and costs. GAO obtained and analyzed Superfund program data from EPA, as well as data on Superfund litigation from cases filed in U.S. district courts. GAO also interviewed EPA officials and other Superfund experts.

## What GAO Recommends

To assist the Congress in making program funding decisions, GAO recommends that EPA assess and improve the data it collects on the status and cost of cleanups, the extent to which sites have viable responsible parties, and the financial impacts of not being able to identify such parties; and that EPA aggregate and provide these data to the Congress. EPA agreed to assess data reported on program status and costs, but did not agree to assess and report data on the extent of viable responsible parties and the financial impacts if such parties cannot be identified. GAO believes these data are essential to assess EPA's future funding needs.

View [GAO-09-656](#) or [key components](#). For more information, contact John B. Stephenson at (202) 512-3841 or [stephensonj@gao.gov](mailto:stephensonj@gao.gov).

## SUPERFUND

### Litigation Has Decreased and EPA Needs Better Information on Site Cleanup and Cost Issues to Estimate Future Program Funding Requirements

#### What GAO Found

Through fiscal year 2007, 80 percent of EPA's completed enforcement actions resulted in agreements with responsible parties, and these actions yielded an estimated \$29.9 billion in recovered costs, work commitments, and other results. While most of this value came from work commitments, responsible parties more often agreed to reimburse EPA for its cleanup costs than to conduct site work. EPA, the Department of Justice, and responsible parties make settlement decisions on the basis of site-specific characteristics, but generally also take into account (1) site cleanup costs, (2) the strength of the evidence of a party's liability for site contamination, and (3) the number and types of responsible parties identified, among other considerations.

Superfund litigation—as measured by the number, duration, and complexity of cases—decreased from fiscal years 1994 through 2007, the period for which data were available. Over this period, the number of Superfund cases filed annually in U.S. district courts decreased by almost 50 percent. Also, litigation in federally-initiated cases decreased as settlements prior to filing cases in court were reached more often, shortening court time. Furthermore, cases became less complex as fewer defendants were involved. Litigation costs can be substantial, according to experts, and such costs may have decreased as a result of these trends. Litigation decreased because (1) fewer sites were listed on the NPL, and, as cleanups progressed, fewer sites required cleanup and parties had less reason to go to court; (2) EPA promoted settlements with responsible parties; and (3) the courts clarified several legal uncertainties.

As of fiscal year 2007, EPA or responsible parties completed construction of remedial actions at about 70 percent of the nonfederal NPL sites, with program appropriations averaging about \$1.2 billion annually. However, GAO identified Superfund program trends that make it difficult to predict future program costs. The number of sites added to the NPL each year has declined; EPA added over 400 sites in fiscal year 1983, but only 20 sites a year, on average, for fiscal years 1998 through 2007. The types of sites have also changed, as mining sites—among the most expensive sites to clean up—have been added to the NPL in greater numbers. At the same time, because of limitations in EPA's data, the extent to which NPL sites do not have viable parties to assist with cleanups and how this may impact EPA's cost recovery efforts are unclear. Further, while remedial actions have been completed or are underway at most NPL sites, data limitations make it difficult to quantify the amount of work remaining. Also, NPL sites that have not yet been cleaned up may be more complex and expensive. Finally, program appropriations and expenditures are declining, while EPA's costs for individual sites are increasing. However, EPA does not provide the Congress with sufficient information to make program funding decisions. For example, EPA does not provide aggregated information on the status and cost of work at sites not yet cleaned up or the extent to which it cannot identify viable parties. As a result, it is unclear how much funding for future cleanup activities will have to come from trust fund appropriations rather than from responsible parties.