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ENVIRONMENTAL CRIME

Issues Related to Justice's
Criminal Prosecution of
Environmental Offenses

Statement of
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ENVIRONMENTAL CRIME: ISSUES RELATED TO
JUSTICE'S CRIMINAL PROSECUTION OF ENVIRONMENTAL OFFENSES

SUMMARY STATEMENT OF L. NYE STEVENS
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At the Subcommittee's request, GAO reviewed Justice data on its investigation and prosecution of criminal environmental offenses, with particular emphasis on the Environmental Crimes Section (ECS), which shares litigation responsibility with Justice's U.S. Attorneys. This review included analyses of electronic Justice data on investigations referred for prosecution, indictments and informations returned, case dispositions, and sanctions imposed for the period October 1, 1987 through May 31, 1993.

U.S. Attorney offices (USAOs) handled the majority of criminal environmental investigations and prosecutions. According to data from Justice's Environment and Natural Resources Division, more criminal environmental investigations were initiated by USAOs alone than were initiated together with ECS or by ECS alone. Less than half of all investigations led to formal charges.

ECS and USAO attorneys filed 335 criminal environmental cases during fiscal years 1988 into 1993 against a total of 743 defendants. USAOs filed 173 cases (slightly more than one-half of all cases filed) against a total of 352 defendants. ECS filed 32 cases charging 84 defendants. The remaining cases were filed with some varying degrees of participation from USAOs and ECS. Through fiscal year 1992, the number of cases filed by USAOs has increased steadily. That increase is largely attributable to increasing numbers of Clean Water Act and Resource Conservation and Recovery Act cases.

Overall, Justice closed cases against 630 defendants in criminal environmental cases between October 1, 1987 and May 31, 1993 and achieved an overall conviction rate of 91.1 percent. Federal courts most frequently imposed probation and a fine on the 532 individual and corporate defendants that either pled guilty or were convicted. Over a third (124) of the 337 sentenced individual defendants received some prison time.

GAO believes that it is difficult to evaluate an organization's workload and accomplishments without reference to its mission, role, and goals. According to ECS's chief, Justice has not clearly articulated a clear mission or role for ECS relative to the USAOs. As a result, ECS does not have a clear goal that is widely accepted by the USAOs. The flexible ECS-USAO relationship also makes it difficult to assess the contribution and performance of ECS in its own right. Both Congress and Justice management will be better poised to assess ECS's performance once its performance standards are set.



Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to discuss the Department of Justice's criminal enforcement of certain federal environmental laws. At your request, we reviewed data on the enforcement effort of Justice's Environmental Crimes Section (ECS). This review included analyses of the number of investigations referred for prosecution, charges (indictments and informations) returned, case dispositions, and defendant sentencing for the period October 1, 1987 through May 31, 1993. We did not review Justice's efforts to enforce other criminal environmental laws not under ECS's jurisdiction, such as those generally relating to federal fish and wildlife laws, and our statement today should not be interpreted to incorporate those efforts.

ECS and Justice's U.S. Attorneys share responsibility for criminally prosecuting individuals and companies which have violated laws designed to protect the environment, such as the Clean Water Act¹ and the Resource Conservation and Recovery Act². Neither Justice budget documents nor important electronic data bases--such as Justice's Executive Office for U.S. Attorneys Criminal Central File--readily distinguish the activities and contributions of ECS from those of the U.S. Attorneys offices (USAOs). This complicates efforts of both senior Justice managers and congressional committees to make staffing and other management decisions and exercise oversight.

Today, we hope to bring some clarification to Justice's criminal environmental enforcement record. Our statement will address two major topics.

- First, we would like to suggest a number of things to consider when interpreting these enforcement statistics. In general, these involve fundamental data issues and basic problems with performance measurement. We believe that it is difficult to evaluate an organization's workload and accomplishments without a clear definition of its mission, role, and goals. Such concerns lay behind the recently-enacted Government Performance and Results Act.³ ECS often works with attorneys in various USAOs. But according to ECS's chief, Justice has not adequately articulated a clear mission or role for ECS. As a result, ECS does not have a clear goal that is widely accepted by the USAOs. While flexibility in a litigating division's relationships with USAOs is not undesirable, it complicates efforts to evaluate the performance and contribution of the division in its own right.
- Second, we would like to discuss our findings regarding criminal environmental investigations and prosecutions. In general, our work clarifies that attorneys in various USAOs led larger numbers of investigations and prosecutions. Considering recent changes

¹33 U.S.C. 1251 *et seq.*

²42 U.S.C. 6901 *et seq.*

³P.L. 103-62.

in Justice policies and procedures, however, it is difficult to determine whether that will continue to be true beginning in this fiscal year.

For this statement, we analyzed data on ECS's workload and accomplishments provided to us by Justice's Environment and Natural Resources Division (ENRD) in electronic format. That data included information on criminal environmental prosecutions, whether led by ECS or USAOs, in which Justice either (a) opened a case between October 1, 1987 and May 31, 1993, or (b) closed a case during that same period.⁴ We also obtained and reviewed data on criminal environmental investigations from the Environmental Protection Agency (EPA), along with some data from the Federal Bureau of Investigation (FBI).⁵ We supplemented our analysis by reviewing available documents on ECS's organization, responsibilities, and procedures and interviewing officials in ENRD, ECS, the Executive Office for U.S. Attorneys (EOUSA), a U.S. Attorney office, FBI, and EPA. We did our work between June and October 1993 in accordance with generally accepted government auditing standards.

BACKGROUND

ENRD is one of six litigating divisions in the Department of Justice. According to the U.S. Attorneys Manual, ENRD is to represent the United States, its agencies, and officials in litigating environmental cases. Among other things, ENRD's areas of responsibility include litigation in both criminal and civil cases concerning environmental quality; the protection, use and development of the nation's natural resources and public lands; wildlife protection; and cleanup of the nation's hazardous waste sites. ENRD's annual statistical report describes the division as the nation's environmental lawyer and largest environmental law firm.

ECS is one of nine ENRD litigating sections. It is responsible for prosecuting individuals and industries which have violated laws designed to protect the environment. It is to provide a specialized legal staff capable of enforcing federal criminal laws relating to environmental protection. Its responsibilities include cases arising under specific statutes. Among others, these include the Clean Water Act, Resource Conservation and Recovery Act (RCRA), Clean Air Act⁶, Comprehensive Environmental Response, Compensation, and Liability Act

⁴Case openings occur when Justice formally charges an individual or corporation through an indictment, information, or complaint. Case closings generally include convictions, guilty pleas, acquittals, and dismissals.

⁵FBI did not provide all the information on investigations and staffing that we requested. For example, FBI did not provide requested information on the field offices in which its agents are investigating alleged environmental offenses, nor did it provide any information on the results of its investigations (e.g., whether the investigation led to a conviction or a declination to prosecute). As a result, we were unable to obtain a more complete picture of criminal environmental case investigations.

⁶42 U.S.C. § 7401 *et seq.*

("Superfund")⁷, and Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).⁸ ECS attorneys are also involved in providing training to Assistant U.S. Attorneys and federal, state, and local law enforcement.

ECS is headed by a Chief and an Assistant Chief. Its trial attorneys are organized into three units, each managed by a supervisory trial attorney (unit chief). In general, ECS's units are aligned geographically with EPA's 10 regions and Justice's 94 U.S. Attorney offices.

The U.S. Attorneys are the principal litigators for the government. They are presidential appointees who operate largely autonomously and control the use of staff resources allocated to their offices. They are organizationally distinct from the litigating divisions within Justice, although they often conduct litigation that requires coordination with those divisions.

Primary responsibility for environmental case prosecutions may rest with a USAO, ECS, or both on a shared basis. Case responsibilities are determined on a case-by-case basis, without precise rules for determining how responsibilities for criminal environmental cases are to be divided.

Because attorneys either in ECS or a local USAO may lead investigations and prosecutions of criminal environmental offenses, ECS categorizes investigations and prosecutions either as "ECS cases" or as "U.S. Attorney office cases." Cases in which attorneys in both a USAO and ECS may share primary case responsibility are "joint cases." The responsibilities of the ECS and USAO attorneys vary depending upon which office is primarily responsible for the case.

- ECS cases are to be handled by the ECS attorney assigned, and the USAO is to designate a liaison attorney to assist with local rules and final review of the indictment, plea, or other disposition.
- Assistant U.S. Attorneys are to lead USAO cases, while ECS is to designate an ECS attorney for consultation and final review of the indictment, plea, or other disposition. ECS resources are to be available to support the efforts of the U.S. Attorneys.
- Designated ECS attorneys and Assistant U.S. Attorneys are to jointly handle planning and scheduling in joint cases.

To assist ECS in advising on and monitoring cases, USAOs are to submit copies of various case-related documents to ECS. The reporting requirements, which are contained in revisions to the U.S. Attorney Manual issued in January 1993, generally vary depending upon whether

⁷42 U.S.C. § 9601 *et. seq.*

⁸7 U.S.C. § 136 *et. seq.*

ECS determines the case to be a "priority" case.⁹ With "priority" cases, USAOs are to submit all proposed indictments, pleas, or other dispositions to ECS for approval. Non-priority cases do not require approval. Nevertheless, Assistant U.S. Attorneys handling cases are encouraged to submit copies of all significant documents so that ECS can serve as a document bank and clearinghouse of information regarding environmental prosecutions.

Growth in ECS Staffing

ECS is a relatively young organization, having been separated from ENRD's Environmental Enforcement Section in 1987. Since the end of fiscal year 1987, ECS's resources have nearly doubled from 24 to 47 staff on board at the end of fiscal year 1993. Table 1 shows the growth in ECS positions and staff on board at the end of each fiscal year.

Table 1: Number and Type of ECS Positions, Fiscal Years 1988-1993

Category	Fiscal Year						Change 1988--1993
	1988	1989	1990	1991	1992	1993	
Attorneys	20	20	23	31	31	31	11
Paralegals	3	3	4	5	5	5	2
Other (e.g., support)	7	7	9	13	13	13	6
Total positions	30	30	36	49	49	49	19
Total staff on board, end of fiscal year	27	33	45	46	45	47	20

Source: GAO analysis of ENRD data.

Since fiscal year 1988, ECS attorneys have averaged spending nearly 55 percent of their time working on cases (including time spent in court). They charged the remainder of their time to such non-case activities as training, supervision, and leave. Between fiscal years 1988 and 1992, ECS spent an average of 15.7 attorney and 3.8 paralegal workyears (or Full-Time Equivalent--FTEs) on casework. App. I provides additional information on the total number

⁹The U.S. Attorney Manual defines "priority" cases as those that are determined to be more significant in scope, complexity or issues that need greater review and control. Cases that are currently subject to such review and control include certain RCRA violations, wetlands violations, charges under the Clean Air Act Amendments except for asbestos cases, knowing endangerment charges, and six other categories of cases. The list of "priority" categories may be modified periodically.

of hours (also converted to FTEs) that ECS attorneys and paralegals annually devoted to casework and other activities.¹⁰

FACTORS FOR CONSIDERATION IN INTERPRETING ENVIRONMENTAL CRIME DATA

Before summarizing the case information you requested, we would first like to suggest two major factors to consider in interpreting these statistics. In general, these involve fundamental data issues and basic concerns about performance measurement.

There are two important data issues to consider. The first involves how ENRD's data system captures whether attorneys in ECS or USAOs hold the "lead responsibility" for handling investigations and cases. ECS officials told us that ECS and USAO line attorneys generally decide among themselves who will have the lead responsibility before formally notifying ECS management of the cases or investigations. ECS attorneys then complete data input forms (noting the case assignment type) for their unit chiefs to review. Support staff then key this case assignment into ENRD's data system. These ECS officials also said, however, that the lead responsibility may shift during an investigation or case, and ENRD's system seldom, if ever, reflects subsequent changes. Neither officials in ENRD nor ECS know about how frequently this shift occurs. According to two ECS unit chiefs, to the extent that this does occur, it usually happens with ECS or USAO cases that evolve into joint cases; rarely do joint cases become exclusively ECS or USAO cases. As a result, we believe that ENRD's data do not accurately reflect distinctions between whether attorneys in ECS or USAOs held the lead responsibility for investigations and cases.

A related issue concerns ENRD's definition of whether investigations and cases are the "joint" responsibility of ECS and USAO attorneys. Although the designation "joint" suggests a fairly even division of labor between ECS and USAOs, according to ENRD and ECS officials, the official definition ("an action that is handled by both the Division and the USAO") allows for a broad range in the division of activities between offices. Hypothetically, an Assistant U.S. Attorney may handle 90 percent of the work while an ECS attorney does the remaining 10 percent on one joint case, but an ECS attorney may do 90 percent of the work with an Assistant U.S. Attorney doing the other 10 percent in another joint case. Consequently, although ENRD's data system may label cases as having been "joint" cases, because ECS and USAO attorneys may participate in those cases to widely varying extents, we are relabeling those cases as having being "shared ECS-USAO" cases. We believe that more accurately, albeit less concisely, reflects those cases' circumstances.

¹⁰USAOs do not maintain similar data for personnel working on environmental crime cases. Thus, we do not know how many USAO workyears were applied to these cases. In its fiscal year 1994 request for appropriations, Justice asked for a total of 8,239 positions (including 3,898 attorneys) for its USAOs.

At present, our only means for verifying ENRD's data would be through individual case reviews, which is extremely time-consuming. We cannot verify those data using information from the U.S. Attorneys, because neither the ENRD nor EOUSA data systems record a unique number that we could use to match investigations and cases.

Justice is implementing a new case numbering system that should ease such difficulties. Under this system, each case will receive a unique number that all data systems will report to Justice's new Departmental Case Management Reporting System. Eventually, the system should allow Justice management to track and manage the thousands of cases that Justice's litigating divisions and USAOs handle each year. This should facilitate decisionmaking and congressional oversight.

Limitations to our access to data inevitably detract from our analysis and presentation, particularly of information relating to referrals and investigations of possible criminal environmental offenses. Because ENRD provided us only with information on cases and not matters,¹¹ and because the FBI said that information on how its investigations were closed was not available, we have little information on referrals that have yet to yield a formal charge. The FBI refused us access to its electronic data and did not provide us with all the statistical information that we requested on the status of its investigations. EPA provided data showing the general status of their case referrals as of August 26, 1993.

The second major factor that we believe is important to consider concerns performance measurement. At the outset, we believe that in reviewing enforcement statistics, it is important to bear in mind that not all investigations, prosecutions, and convictions are the same: while each may be significant in its own right, some investigations and cases--such as the government's case against Exxon in the Exxon Valdez oil spill accident¹²--are more complex and time-consuming than others.

Moreover, it is difficult to evaluate an organization's workload and accomplishments without reference to its mission, role, and goals. The recently-enacted Government Performance and Results Act reflects this principle. It requires all agencies to establish a program performance measurement system using strategic plans, annual performance plans, and annual performance reports. Among other things, the act is intended to improve program effectiveness by promoting a new focus on results and improve congressional oversight by providing more objective information on the efficiency of federal programs and the extent to which those

¹¹In general, an investigation is classified as a "matter" until an individual or corporation is formally charged through an indictment or criminal information, when it becomes a "case." Justice did not provide us with information on referrals or matters that either did not or have not yet yielded formal charges.

¹²United States v. Exxon Corporation and Exxon Shipping Company, No. A90-015 CR (D. Alaska 1990).

programs achieve statutory objectives. Justice Management Division is preparing instructions for all components to begin work on meeting the act's requirements.

ECS often works with attorneys in different USAOs, and its role in those relationships varies widely. According to ECS's chief, Justice has not articulated a clear mission or role for ECS relative to the USAOs. As a result, ECS does not have clear goals that are widely accepted by the USAOs. Justice budget documents say that ECS's original goal was to provide a staff of prosecutors experienced in environmental law to prosecute cases developed by EPA investigators. But ECS's chief told us that ECS's purpose is now broader than just prosecuting cases: ECS is also to foster and facilitate the prosecution of environmental crime, which the U.S. Attorney's Manual suggests in its description of ECS's purpose and functions. If that more accurately describes ECS's role, we believe that ECS's performance should be evaluated by more than the number of prosecutions that it led or participated in.

While flexibility in a litigating division's relationships with the USAOs is not undesirable, it complicates efforts to evaluate the performance of the division in its own right. Justice is now beginning to work on establishing performance standards for all of its components. Both Congress and Justice management will be better poised to assess ECS's performance after those performance standards are set.

OVERVIEW OF JUSTICE'S ENVIRONMENTAL CASE PROCESSING

The largest number of Justice's prosecutions of criminal environmental offenses have been handled by attorneys in USAOs. EPA and FBI submitted most referrals of suspected criminal environmental violations to USAOs, which eventually led most prosecutions.

Referrals of and investigations into possible criminal environmental offenses

Attorneys in both ECS and USAOs work with special agents in the FBI and EPA, along with criminal investigators from other federal, state, and local agencies, in investigating possible environmental violations. Table 2 illustrates the number of investigative referrals from various agencies that led to environmental prosecutions. Over 61 percent of all case referrals originated in EPA, and more than half of those referrals went to U.S. Attorney offices.¹³

¹³Beginning in March, 1993, EPA altered its policies and procedures for referring criminal cases for prosecutive action. In the past, EPA investigators sent criminal referrals to both the local USAO and ECS. Under the new procedures, EPA makes referrals only to the USAO.

Justice investigators--mostly FBI--made 34 percent of all referrals,¹⁴ and other agencies (such as the Navy or the Department of the Interior) submitted the remaining 5 percent. Table 2 also illustrates that nearly 60 percent of all referrals, whether from EPA, Justice, or other sources, went to USAOs, and less than 10 percent went to ECS.

¹⁴According to ENRD officials, other Justice components, such as the Bureau of Prisons, may also refer possible criminal environmental offenses to USAOs and ECS. However, most referrals are from FBI, which reported having opened 363 investigations into possible environmental offenses in fiscal year 1992. FBI noted that almost all investigations are done jointly with investigators from EPA or other agencies, but did not provide exact statistics. Similarly, FBI did not say how many of those investigations concerned statutes for which ECS has no enforcement responsibility (e.g., criminal wildlife offenses, which ENRD's Wildlife and Marine Resources Section is responsible for enforcing).

Table 2: Agencies Making Criminal Environmental Investigation Referrals and Office With Responsibility for the Case, Fiscal Years 1988 Into 1993.

Referring Agency	Lead office	1988	1989	1990	1991	1992	1993	Total	Percent of Referring Agency Total	Percent of Grand Total
EPA	USAO	13	17	12	35	16	4	97	56.4%	34.6%
	Shared ECS-USAO	15	8	14	14	4	2	57	33.1%	20.4%
	ECS	5	4	4	4	1	0	18	10.5%	6.4%
	Total	33	29	30	53	21	6	172	100.0%	61.4%
FBI and Other Justice Components	USAO	5	10	8	19	14	4	60	63.8%	21.4%
	Shared ECS-USAO	7	7	6	5	2	1	28	29.8%	10.0%
	ECS	1	1	2	2	0	0	6	6.4%	2.1%
	Total	13	18	16	26	16	5	94	100.0%	33.6%
Other	USAO	2	3	0	3	2	0	10	71.4%	3.6%
	Shared ECS-USAO	0	2	0	0	0	0	2	14.3%	0.7%
	ECS	0	1	1	0	0	0	2	14.3%	0.7%
	Total	2	6	1	3	2	0	14	100.0%	5.0%
Total	USAO	20	30	20	57	32	8	167	N/A	59.6%
	Shared ECS-USAO	22	17	20	19	6	3	87	N/A	31.1%
	ECS	6	6	7	6	1	0	26	N/A	9.3%
	Total	48	53	47	82	39	11	280	N/A	100.0%

Notes: Fiscal year 1993 data through May 31, 1993 only.

N/A: Not applicable.

Source: GAO analysis of ENRD data.

The available data on investigations into criminal environmental offenses are incomplete. As with the data on referrals, ENRD provided case-level electronic data only on investigations that led to formal charges and aggregate data on declinations. These data suggest that more criminal environmental matters were opened by USAOs alone than were opened in matters by ECS alone or on a shared basis. On average, during fiscal years 1988 through 1992, USAOs opened over half of all criminal environmental matters. ECS opened slightly less than 15 percent by itself, and the remaining 36 percent were opened with participation from both USAOs and ECS. Table 3 shows the change in the number of environmental matters opened since fiscal year 1988 that resulted in formal charges.

Table 3: Criminal Environmental Matters Opened by USAOs and ECS, Fiscal Years 1988 through 1992

Office of Lead Responsibility	Fiscal Year											
	1988		1989		1990		1991		1992		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
USAO	30	73.2	31	56.4	21	45.7	79	50.3	8	21.1	169	50.1
Shared ECS-USAO	8	19.5	17	30.9	15	32.6	53	33.8	27	71.1	120	35.6
ECS	3	7.3	7	12.7	10	21.7	25	15.9	3	7.9	48	14.2
Total	41	100.0	55	100.0	46	100.0	157	100.0	38	100.0	337	100.0

Note: Percentages may not sum to 100.0 due to rounding.

Source: GAO analysis of ENRD data.

Other data from EPA and FBI suggest greater levels of overall investigative activity. FBI's environmental investigations data indicate that the number of investigations pending at the end of the fiscal year has increased from 289 in 1990 to 443 in 1992.¹⁵ EPA data indicate that it has referred growing numbers of criminal investigations to Justice (both USAOs and ECS) for prosecution. EPA referred 66 criminal investigations for prosecution in fiscal year 1990, 81 in fiscal year 1991, and 109 in fiscal year 1992. Between October 1, 1992 and August 26, 1993, EPA referred 49 criminal cases to Justice. According to EPA, of 469 investigations active as of July 19, 1993, ECS had the prosecutive lead in 26 and some supporting prosecutive role in 52. However, not all of those investigations have yet been referred to Justice.

Cases Filed

ENRD data suggest that slightly less than half of all completed criminal environmental investigations yielded formal charges. According to information from ENRD, between fiscal years 1988 and May 31, 1993, all Justice attorneys--both ECS and USAO--filed 335 criminal environmental cases involving a total of 743 individual and business defendants and declined to pursue 380 investigations. Of the 335 cases filed, Justice secured informations or indictments against businesses, without charging an individual, in 71 cases.

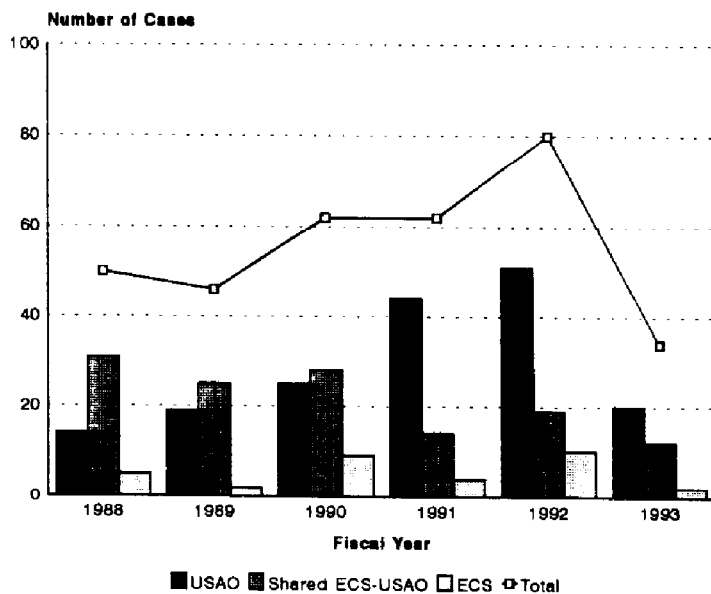
Figure 1 illustrates the overall trend in the number of cases filed, showing the increase since fiscal year 1988. Over the period, USAOs filed 173 cases (slightly more than one-half of all

¹⁵Again, however, it is important to note that these data include investigations into all possible environmental offenses, not just those for which ECS has enforcement responsibility.

cases filed) against a total of 352 defendants. As with the numbers of criminal referrals received, the number of USAO criminal environmental cases filed has risen over time.¹⁶ ECS attorneys filed 32 cases against 84 defendants. In 129 cases involving 307 defendants, ECS and USAO attorneys shared responsibility for the case.¹⁷ App. II provides additional detail on indictments, informations, and declinations, and app. III provides additional detail on case filings.

Figure 1:

GAO Cases Filed Since Fiscal Year 1988 By Responsible Office



Note: Data for Fiscal Year 1993 are through May 31, 1993 only.
Source: GAO analysis of ENRD data.

¹⁶Although the partial-year 1993 case data suggest that case filings for fiscal year 1993 may decrease significantly, ECS and ENRD officials later told us that end-of-year figures more closely equalled the 1992 total.

¹⁷Data on the lead responsibility for one case was missing.

The data displayed in figure 1 indicate a number of trends:

- The number of cases filed by USAOs has increased steadily until 1993. Projections for case filings in fiscal year 1993, suggest that the total number may decline for the first time.¹⁸
- The proportion of case filings that include some ECS participation decreased between fiscal year 1988 and 1991, from 61 to 23 percent of all cases filed. Since then, the proportion has risen to 35 percent (through the first 8 months of fiscal year 1993. See Table III.1 for additional detail.)

In addition, ECS case filings have remained a small percentage of total Justice filings, but have tended to have larger numbers of defendants (an average of 2.6 per case) than cases brought by USAOs (2.0 per case). (See tables III.1 and III.2 for additional detail.)

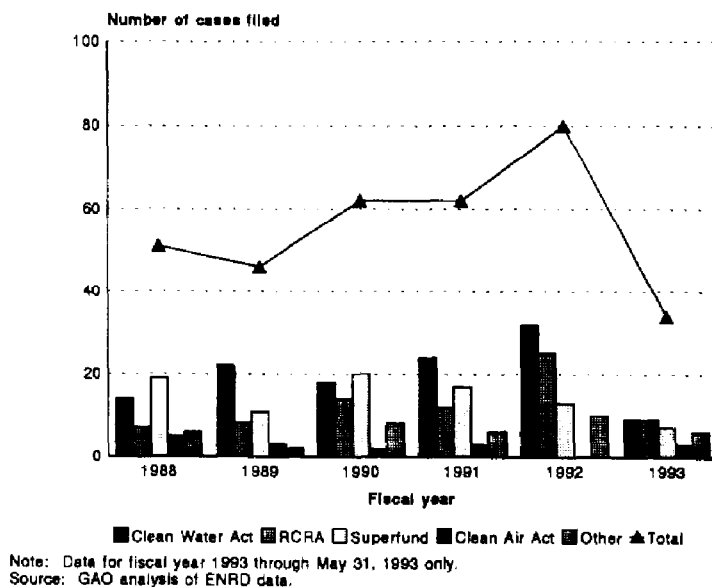
Figure 2 shows that more cases involved Clean Water Act violations as lead charges than any other offense classification (119 out of 335 cases, or about 35.5 percent).¹⁹ Superfund and RCRA offenses each account for roughly 25 percent of total case filings. (See Table III.3 for additional detail.)

¹⁸The January 1993 revisions to the U.S. Attorneys Manual encourage cases to be handled jointly rather than by ECS or USAO attorneys alone.

¹⁹For ease of reference, we will hereafter refer to those cases as "Clean Water Act cases." We will refer to other lead charges similarly, even though they may involve numerous other charges, such as conspiracy or false statement.

Figure 2:

GAO Lead Charges in Cases Filed Fiscal Years 1988 -- 1993



Defendant Dispositions and Sanctions

Overall, USAOs and ECS combined to close cases against 630 defendants between October 1, 1987 and May 31, 1993. Of that total, 532 either pled guilty or were convicted. Charges were dismissed against 46 defendants, and 52 were acquitted. This translates into an overall conviction rate of 91.1 percent.²⁰

Our review of disposition data suggests three major points:

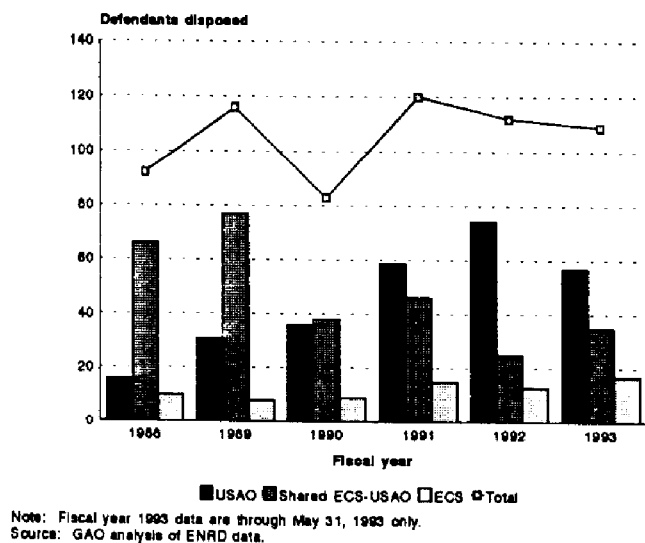
- First, the total number of defendants disposed (i.e., dismissed, acquitted, convicted or found guilty by plea) each year has varied between 82 and 120.

²⁰Conviction rates are calculated by dividing the sum of the number of guilty pleas and convictions by the sum of the number of guilty pleas, convictions, and acquittals.

-- Second, USAOs have disposed of an increasing number of defendants, most of whom were charged with Clean Water Act or RCRA violations. At the same time, the annual number of defendants disposed in shared ECS-USAO cases has generally fallen. Twice as many defendants in those cases had been charged with Superfund violations than either Clean Water or RCRA offenses. In ECS cases, the annual number of defendants disposed has generally increased, although the total number remains relatively small. ECS case defendants also tend to have been charged with Superfund offenses. Figure 3 illustrates the shift in the numbers of defendants disposed in USAO, shared ECS-USAO, and ECS cases. (App. IV details the lead charges for each defendant in cases closed over the period.)

Figure 3:

GAO Total Defendants Disposed Since Fiscal Year 1988



-- Third, the conviction rate against corporate or business defendants (95.6 percent) is slightly higher than against individuals (88.7 percent). ECS achieved a corporate conviction rate of 100.0 percent: 22 of 23 corporate defendants pled guilty, and the other defendant was convicted. The lowest conviction rate was in shared ECS-USAO cases against individual defendants: 82.8 percent. USAOs attained conviction rates of 92.9 percent against

individual defendants and 97.7 percent against business defendants. (See App. V for additional details.)

Among the 337 individual defendants convicted or pleading guilty, federal courts more often imposed probation and a fine (100 individuals, or nearly 30 percent of all individuals sentenced) than any other particular sentence. Over a third of all sentenced individual defendants (124, or 36.8 percent) received some prison time. Federal courts imposed fines on 178 (93.2 percent) of convicted corporations or businesses. App. VI provides additional detail on the sanctions imposed.

We were unable to assess the extent to which these sanctions comply with the Federal Sentencing Guidelines because the available data do not indicate whether the Guidelines applied to each case. The Guidelines for individuals took effect in November 1987, and applied to conduct that occurred after that date. Data from ENRD and EPA suggest that environmental crime cases take years to develop and prosecute. As a result, according to information from ECS, the Sentencing Guidelines only began to have a "significant effect on the kinds of matters handled by ECS" in 1990, with the majority of their cases falling under the guidelines only by fiscal year 1992.

CONCLUSIONS

In summary, we found that the USAOs investigated and prosecuted larger numbers of criminal environmental cases between fiscal years 1988 and 1992. Those offices brought increasing numbers of Clean Water Act and RCRA cases. ECS led relatively few prosecutions since fiscal year 1988, never rising above 14.5 percent of cases filed in any given year, and the USAOs and ECS have generally brought fewer shared cases over time. However, the available data for the first half of fiscal year 1993 may indicate that these trends are changing. In particular, the proportion of cases that involve shared responsibility appears to be growing.

Overall, USAO and ECS attorneys combined to close cases against 630 defendants between October 1, 1987 and May 31, 1993 and achieved an overall conviction rate of 91.1 percent. Federal courts more often imposed probation and a fine than any other single sentence on the individual defendants that either pled guilty or were convicted. Over a third of all individual defendants received some prison time. Federal courts imposed fines on all but 13 sentenced corporations.

We believe that it is difficult to evaluate an organization's workload and accomplishments without reference to its mission, role, and goals. Both Congress and Justice management will be better poised to assess ECS's performance once its performance standards are set.

That concludes my statement, Mr. Chairman. We would be happy to respond to any questions.

Appendix I: Detailed Information on Time Spent on Casework and Other Activities By ECS Attorneys and Paralegals, Fiscal Years 1988 Through May 31, 1993

	Casework			Other			Total		
	Hours	FTEs	Percent of total	Hours	FTEs	Percent of total	Hours	FTEs	Percent of total
FY 1988									
Attorneys	30,334.8	14.5	58.6%	21,467.5	10.3	41.4%	51,802.3	24.8	100.0%
Paralegals	3,857.3	1.8	38.7%	6,122.5	2.9	61.3%	9,979.8	4.8	100.0%
Total	34,192.0	16.4	55.3%	27,590.0	13.2	44.7%	61,782.0	29.6	100.0%
FY 1989									
Attorneys	28,457.5	13.6	57.3%	21,165.8	10.1	42.7%	49,623.3	23.8	100.0%
Paralegals	4,427.8	2.1	42.0%	6,126.5	2.9	58.0%	10,554.3	5.1	100.0%
Total	32,885.3	15.8	54.6%	27,292.3	13.1	45.4%	60,177.5	28.8	100.0%
FY 1990									
Attorneys	34,768.0	16.7	57.5%	25,673.3	12.3	42.5%	60,441.3	29.0	100.0%
Paralegals	11,568.3	5.5	69.2%	5,151.8	2.5	30.8%	16,720.0	8.0	100.0%
Total	46,336.3	22.2	60.1%	30,825.0	14.8	39.9%	77,161.3	37.0	100.0%
FY 1991									
Attorneys	37,213.3	17.8	55.8%	29,469.8	14.1	44.2%	66,683.0	32.0	100.0%
Paralegals	9,869.0	4.7	56.6%	7,565.5	3.6	43.4%	17,434.5	8.4	100.0%
Total	47,082.3	22.6	56.0%	37,035.3	17.7	44.0%	84,117.5	40.3	100.0%
FY 1992									
Attorneys	32,575.5	15.6	47.2%	36,429.8	17.5	52.8%	69,005.3	33.1	100.0%
Paralegals	10,430.0	5.0	56.7%	7,972.8	3.8	43.3%	18,402.8	8.8	100.0%
Total	43,005.5	20.6	49.2%	44,402.5	21.3	50.8%	87,408.0	41.9	100.0%
FY 1993 (Through May 31, 1993)									
Attorneys	26,182.5	12.5	52.9%	23,345.8	11.2	47.1%	49,528.3	23.7	100.0%
Paralegals	4,073.3	2.0	46.8%	4,635.0	2.2	53.2%	8,708.3	4.2	100.0%
Total	30,255.8	14.5	52.0%	27,980.8	13.4	48.0%	58,236.5	27.9	100.0%
Averages (1988--1992)									
Attorneys	32,669.8	15.7	54.9%	26,841.2	12.9	45.1%	59,511.0	28.5	100.0%
Paralegals	8,030.5	3.8	54.9%	6,587.8	3.2	45.1%	14,618.3	7.0	100.0%
Total	40,700.3	19.5	54.9%	33,429.0	16.0	45.1%	74,129.3	35.5	100.0%

Source: GAO analysis of ENRD data.

Appendix II: Detailed Information On Criminal Environmental Indictments and Informations.

Table II.1: Formal charges filed by lead office. fiscal years 1988 through 1993, along with total declinations.

Type of assignment	Charging Document	Fiscal Year						Total	Percent of total
		1988	1989	1990	1991	1992	1993		
USAO	Indictment	22	28	38	65	58	39	250	33.6%
	Information	5	7	14	19	40	17	102	13.7%
	Total	27	35	52	84	98	56	352	47.3%
Shared ECS-USAO	Indictment	62	31	45	21	61	19	239	32.1%
	Information	14	17	15	14	4	4	68	9.1%
	Total	76	48	60	35	65	23	307	41.3%
ECS	Indictment	5	5	17	3	18	6	54	7.3%
	Information	4	5	3	3	11	4	30	4.0%
	Total	9	10	20	6	29	10	84	11.3%
Total	Indictment	89	64	100	89	137	64	543	73.0%
	Information	23	29	32	36	55	25	200	26.9%
	Total	112	93	132	125	192	89	743	100.0

- Notes: -A USAO also filed a complaint in fiscal year 1990.
 -Percentages may not total to 100.0 due to rounding.
 -Data for fiscal year 1993 are through May 31, 1993 only.

Source: GAO analysis of ENRD data.

Table II.2: Indictments and informations charging a business but no individuals

Charging document	Fiscal Year						Total
	1988	1989	1990	1991	1992	1993	
Indictment	5	4	8	4	2	1	24
Information	6	8	7	10	13	5	49
Total	11	12	15	14	15	6	73

Notes: A USAO also filed a complaint against a business and no individual in fiscal year 1990. Fiscal year 1993 data are through May 31, 1993 only.

Source: GAO analysis of ENRD data.

Table II.3: Declinations

	Fiscal Year						Total
	1988	1989	1990	1991	1992	1993	
Declinations	72	96	27	93	63	29	380

Note: Fiscal year 1993 data through May 31, 1993 only.

Source: ENRD.

Appendix III: Additional detail on criminal environmental cases filed since fiscal year 1988.

Table III.1: Number and Percent of Annual Total of Cases Filed, USAO Cases, Shared ECS-USAO Cases, and ECS Cases, Fiscal Years 1988 Into 1993

Office with Lead Responsibility	Fiscal Year												Total	
	1988		1989		1990		1991		1992		1993		Number	Percent
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent		
USAOs	14	27.5	19	41.3	25	40.3	44	71.0	51	63.8	20	58.8	173	51.6
Shared ECS-USAO	31	60.8	25	54.3	28	45.2	14	22.6	19	23.8	12	35.3	129	38.5
ECS	5	9.8	2	4.3	9	14.5	4	6.5	10	12.5	2	5.9	32	9.6
Total	50	100.0	46	100.0	62	100.0	62	100.0	80	100.0	34	100.0	334	100.0

Notes: -- Fiscal year 1993 data through May 31, 1993 only.

-- ENRD data reveal that another case was filed in fiscal year 1988, but does not indicate which office held lead responsibility for that case.

-- Percentages may not total to 100.0 due to rounding.

Source: GAO analysis of ENRD data.

Table III.2: Defendants Per Case in USAO Cases, Shared ECS-USAO Cases, and ECS Cases, Fiscal Years 1988 Into 1993.

Fiscal year of case filing	Lead office	Cases	Defendants	Defendants per case
1988	USAOs	14	27	1.9
	Shared ECS-USAO	31	76	2.5
	ECS	5	9	1.8
	Total	50	112	2.2
1989	USAOs	19	34	1.8
	Shared ECS-USAO	25	48	1.9
	ECS	2	10	5.0
	Total	46	92	2.0
1990	USAOs	25	53	2.1
	Shared ECS-USAO	28	60	2.1
	ECS	9	20	2.2
	Total	62	133	2.1
1991	USAOs	44	84	1.9
	Shared ECS-USAO	14	35	2.5
	ECS	4	6	1.5
	Total	62	125	2.0
1992	USAOs	51	98	1.9
	Shared ECS-USAO	19	65	3.4
	ECS	10	29	2.9
	Total	80	192	2.4
1993	USAOs	20	56	2.8
	Shared ECS-USAO	12	23	1.9
	ECS	2	10	5.0
	Total	34	89	2.6
Total	USAOs	173	352	2.0
	Shared ECS-USAO	129	307	2.4
	ECS	32	84	2.6
	Total	334	743	2.2

Notes: -Fiscal Year 1993 data through May 31, 1993 only.
 -ENRD data reveal that another case was filed in fiscal year 1988, but does not indicate which office held lead responsibility for that case.

Source: GAO analysis of ENRD data.

Table III.3: Classification (Lead Charge) of Criminal Environmental Cases Filed Since Fiscal Year 1988

Fiscal year case filed	Type of violation						Total
	Clean Water Act	Superfund	RCRA	Clean Air Act	FIFRA	Other	
1988	14	19	7	5	4	2	51
1989	22	11	8	3	0	2	46
1990	18	20	14	2	1	7	62
1991	24	17	12	3	0	6	62
1992	32	13	25	0	1	9	80
1993	9	7	9	3	4	2	34
Total	119	87	75	16	10	28	335

Note: Fiscal Year 1993 data through May 31, 1993 only.

Source: GAO analysis of ENRD data.

Appendix IV: Defendant Lead Charges in Cases Closed, By Fiscal Year of Disposition, by Type of Assignment

Type of Case	Category of Lead Charge	Fiscal Year						Total	Percent
		1988	1989	1990	1991	1992	1993		
USAO	Clean Water	6	14	17	25	29	28	119	43.6%
	RCRA	5	10	2	14	32	13	76	27.8%
	Superfund	4	6	10	7	9	7	43	15.8%
	FIFRA	2	1				6	9	3.3%
	Clean Air Act			1	5	1	2	9	3.3%
	Other			5	8	3	1	17	6.2%
	Total		17	31	35	59	74	57	273
Shared ECS-USAO	Clean Water	11	18	5	5	7	11	57	20.0%
	RCRA	6	9	9	10	3	12	49	17.2%
	Superfund	16	40	14	25	12	10	117	41.1%
	FIFRA	4	1	2				7	2.5%
	Clean Air Act	27	9	5	3		2	46	16.1%
	Other			3	3	3		9	3.2%
	Total		64	77	38	46	25	35	285
ECS	Clean Water		1	1	2	1	5	10	13.9%
	RCRA		2	3	8	3		16	22.2%
	Superfund	8	4	5	2	5	6	30	41.7%
	FIFRA					2	1	3	4.2%
	Clean Air Act	1			2			3	4.2%
	Other	1	1		1	2	5	10	13.9%
	Total		10	8	9	15	13	17	72
Total	Clean Water	17	33	23	32	37	44	186	29.5%
	RCRA	11	21	14	32	38	25	141	22.4%
	Superfund	28	50	29	34	26	23	190	30.2%
	FIFRA	6	2	2	0	2	7	19	3.0%
	Clean Air Act	28	9	6	10	1	4	58	9.2%
	Other	1	1	8	12	8	6	36	5.7%
	Total		91	116	82	120	112	109	630

Note: Fiscal Year 1993 data through May 31, 1993 only.

Source: GAO analysis of ENRD data.

Appendix V: Disposition of Individual and Corporate Defendants by Lead Office

Lead office	Defendant	Disposition	Fiscal year of disposition						Total	Conviction Rate ¹
			1988	1989	1990	1991	1992	1993		
USAO	Individual	Acquitted	0	0	0	7	3	2	12	92.9%
		Dismissed	1	1	0	2	7	1	12	
		Convicted	0	6	4	5	6	9	30	
		Pled Guilty	11	13	16	23	38	25	126	
		Subtotal	12	20	20	37	54	37	180	
	Corporation	Acquitted	0	0	0	2	0	0	2	97.7%
		Dismissed	0	1	2	1	1	2	7	
		Convicted	0	0	0	1	4	3	8	
		Pled Guilty	5	10	13	18	15	15	76	
		Subtotal	5	11	15	22	20	20	93	
	Total for USAOs	17	31	35	59	74	57	273		
Shared ECS-USAO	Individual	Acquitted	1	17	1	2	1	7	29	82.8%
		Dismissed	1	8	2	4	1	1	17	
		Convicted	2	6	0	4	2	5	19	
		Pled Guilty	44	19	20	18	11	9	121	
		Subtotal	48	50	23	28	15	22	186	
	Corporation	Acquitted	0	2	0	0	0	5	7	92.6%
		Dismissed	2	0	0	3	0	0	5	
		Convicted	0	2	1	2	2	1	8	
		Pled Guilty	14	23	14	13	8	7	79	
		Subtotal	16	27	15	18	10	13	99	
	Total for Shared Cases	64	77	38	46	25	35	285		
ECS	Individual	Acquitted	0	1	0	1	0	0	2	95.5%
		Dismissed	0	0	0	4	1	0	5	
		Convicted	0	1	0	3	2	0	6	
		Pled Guilty	6	4	3	4	7	12	36	
		Subtotal	6	6	3	12	10	12	49	
	Corporation	Acquitted	0	0	0	0	0	0	0	100.0%
		Dismissed	0	0	0	0	0	0	0	
		Convicted	1	0	0	0	0	0	1	
		Pled Guilty	3	2	6	3	3	5	22	
		Subtotal	4	2	6	3	3	5	23	
	Total for ECS Cases	10	8	9	15	13	17	72		

Lead office	Defendant	Disposition	Fiscal year of disposition						Total	Conviction Rate ¹
			1988	1989	1990	1991	1992	1993		
Total	Individual	Acquitted	1	18	1	10	4	9	43	88.7%
		Dismissed	2	9	2	10	9	2	34	
		Convicted	2	13	4	12	10	14	55	
		Pled Guilty	61	36	39	45	56	46	283	
		Subtotal	66	76	46	77	79	71	415	
	Corporation	Acquitted	0	2	0	2	0	5	9	95.6%
		Dismissed	2	1	2	4	1	2	12	
		Convicted	1	2	1	3	6	4	17	
		Pled Guilty	22	35	33	34	26	27	177	
		Subtotal	25	40	36	43	33	38	215	
		Total	91	116	82	120	112	109	630	

¹Conviction rates are calculated by dividing the sum of the number of guilty pleas and convictions by the sum of the number of guilty pleas, convictions, and acquittals.

Note: Fiscal Year 1993 data through May 31, 1993 only.

Source: GAO analysis of ENRD data.

Appendix VI: Sanctions Applied to Convicted Environmental Individual and Corporate Offenders

Table VI.1: Sanctions applied against individual defendants, not business entities, between Oct. 1, 1987 and May 31, 1993

Sanctions	Sanctions applied in USAO cases against individual defendants		Sanctions applied in shared ECS-USAO cases against individual defendants		Sanctions applied in ECS cases against individual defendants		Total	Percent of Total
	Total	Percent of Total	Total	Percent of Total	Total	Percent of Total		
No apparent sanction	4	2.6%	0	0.0%	0	0.0%	4	1.2%
Restitution only	1	0.6%	0	0.0%	0	0.0%	1	0.3%
Fine only	21	13.5%	16	11.4%	4	9.8%	41	12.2%
Fine & Restitution	0	0.0%	1	0.7%	0	0.0%	1	0.3%
Probation only	21	13.5%	13	9.3%	1	2.4%	35	10.4%
Probation & Restitution	0	0.0%	1	0.7%	0	0.0%	1	0.3%
Probation & Fine	27	17.3%	62	44.3%	11	26.8%	100	29.7%
Probation, Fine, and Restitution	4	2.6%	1	0.7%	2	4.9%	7	2.1%
Supervised Release only	5	3.2%	1	0.7%	0	0.0%	6	1.8%
Supervised Release & Restitution	0	0.0%	1	0.7%	0	0.0%	1	0.3%
Supervised Release & Fine	1	0.6%	2	1.4%	0	0.0%	3	0.9%
Supervised Release & Probation	6	3.8%	2	1.4%	0	0.0%	8	2.4%
Supervised Release, Probation, & Fine	3	1.9%	2	1.4%	0	0.0%	5	1.5%
Prison only	18	11.5%	7	5.0%	4	9.8%	29	8.6%
Prison & Restitution	1	0.6%	1	0.7%	1	2.4%	3	0.9%
Prison & Fine	6	3.8%	3	2.1%	2	4.9%	11	3.3%
Prison, Fine & Restitution	3	1.9%	0	0.0%	0	0.0%	3	0.9%
Prison & Probation	6	3.8%	3	2.1%	7	17.1%	16	4.7%
Prison, Probation & Restitution	2	1.3%	5	3.6%	0	0.0%	7	2.1%
Prison, Probation, & Fine	6	3.8%	14	10.0%	3	7.3%	23	6.8%
Prison, Probation, Fine, & Restitution	0	0.0%	2	1.4%	2	4.9%	4	1.2%
Prison & Supervised Release	7	4.5%	0	0.0%	1	2.4%	8	2.4%
Prison, Supervised Release, & Restitution	0	0.0%	0	0.0%	2	4.9%	2	0.6%
Prison, Supervised Release, & Fine	9	5.8%	2	1.4%	0	0.0%	11	3.3%
Prison, Supervised Release, Probation, & Restitution	2	1.3%	1	0.7%	1	2.4%	4	1.2%
Prison, Supervised Release, Probation, & Fine	3	1.9%	0	0.0%	0	0.0%	3	0.9%
Total	156	100.0%	140	100.0%	41	100.0%	337	100.0%

Source: GAO analysis of ENRD data.

Table VI.2: Sanctions applied against business entities between Oct. 1, 1987 and May 31, 1993

Sanctions	Sanctions applied in USAO cases against business entities		Sanctions applied in shared ECS-USAO cases against business entities		Sanctions applied in ECS cases against business entities		Total	Percent of Total
	Total	Percent of Total	Total	Percent of Total	Total	Percent of Total		
No apparent sanction	4	4.9%	1	1.1%	0	0.0%	5	2.6%
Restitution only	3	3.7%	2	2.3%	0	0.0%	5	2.6%
Fine only	47	57.3%	53	60.9%	10	45.5%	110	57.6%
Fine & Restitution	8	9.8%	13	14.9%	5	22.7%	26	13.6%
Probation only	0	0.0%	1	1.1%	1	4.5%	2	1.0%
Probation & Restitution	1	1.2%	0	0.0%	0	0.0%	1	0.5%
Probation & Fine	14	17.1%	16	18.4%	6	27.3%	36	18.8%
Probation, Fine, and Restitution	5	6.1%	1	1.1%	0	0.0%	6	3.1%
Total	82	100.0%	87	100.0%	22	100.0%	191	100.0%

Source: GAO analysis of ENRD data.

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