



Everything You Wanted to Know About Citizen Suits...

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Dealing with CWA Citizen Suits

- Who can bring one?
- What claims can they raise?
- What relief can be obtained?
- What procedures do they have to follow?
- How does this relate to agency enforcement?
- Does it matter if you are now in compliance?
- How should you respond if you get a notice?

Who Can Bring a Citizen Suit?

- “Any person”
- But there can be standing issues
- But not hard to satisfy the standing test
- Need one plaintiff who uses the waterbody, but don’t need to prove injury

What Claims Can They Raise?

- Any violations of NPDES permit
- Generally exceedances of numeric limits that have been reported on DMRs
- But also sometimes based on violations of narrative standards – such as “no toxics in toxic amounts”
- Can also include violations of monitoring and reporting requirements

What Relief Can Be Obtained?

- Injunctive relief – court can order you to take steps to come into compliance with permit requirements, with schedule
- Penalties
 - court can assess civil penalties, which are paid to U.S. Treasury, NOT to citizen plaintiffs
 - Penalties can be up to \$54,000 per day per violation
 - Citizen groups will often ask for settlement, in which funds are paid not to Treasury, but to some environmental cause or fund
- Attorney’s fees and costs – court can order you to pay the plaintiffs’ legal fees and costs, if they “substantially prevail”

What Are Required Procedures?

- Citizen group must send a notice of intent to sue to the discharger, with copies to EPA and State.
- Then they have to wait 60 days.
- If no agency enforcement action, then they can file citizen suit in Federal court at any time after the 60 days pass.
- OR they can decide not to file citizen suit at all, or work out a settlement with the discharger without filing a suit.

Relation to Agency Enforcement

- If there is “diligent prosecution” of the violations by EPA or the State BEFORE the citizen files their suit, then the suit can’t proceed – will get dismissed.
- What is “diligent prosecution?” Looked at on a case-by-case basis, but the court will focus on whether the enforcement is going to lead to compliance.
- Courts will also look at the amount of any penalty.
- If agency case not completed until after citizen suit filed, then citizen suit not precluded, although it is still possible to get it dismissed on *res judicata* grounds.

What If You're In Compliance?

- Courts have held that citizen suit can't proceed if the discharger has remedied violations and is now in compliance
- But might have to show that it's not just this month – that there's a pattern of compliance
- Also note – citizen suit cannot go back more than 5 years in assessing penalties for violations

What To Do If You Get A Notice

- DON'T PANIC
- Review claims made in notice of intent
- Consider working with agency to complete enforcement for any pending violations
- Prepare your narrative as to compliance actions and schedules
- Approach citizen group to discuss concerns
- Remember that you are in pre-litigation mode

Questions?

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