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Citizen Suits and Defenses Against Them

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TABLE OF CONTENTS

I. INTRODUCTION ................................................................. 4

II. STATISTICAL OVERVIEW OF ENVIRONMENTAL CITIZEN SUITS .... 6

III. ORIGINS OF THE CITIZEN SUIT PROVISIONS ......................... 8

A. Clean Air Act in 1970.
B. Legislative History
C. Use
D. Executive Branch Support

IV. GENERAL STRUCTURE OF CITIZEN SUIT PROVISIONS .............. 9

A. Plaintiffs
B. Defendants
C. Jurisdiction and Venue
D. Enforceable Provisions
E. Prior Notice
F. Diligent Government Prosecution Bar
G. Intervention
H. Remedies
I. Attorney Fees and Costs

V. ISSUES ................................................................. 10

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1 Seven years ago, Professor Jeffrey Miller of Pace University School of Law, prepared a paper entitled “Private Enforcement of Federal Pollution Control Laws: The Citizen Suit Provisions” for the ALI/ABA Course of Study in Environmental Litigation. This discussion is largely based upon that paper which provides the major source of materials that follow. Professor Miller deserves the credit for much of this work, but the author takes full responsibility for the contents incorporated herein.
A. Constitutionality  ................................................................................................. 10
   1. Separation of Powers in Enforcement Cases
   2. Separation of Powers in Mandamus Cases
B. Personal Jurisdiction  ........................................................................................... 10
   1. Plaintiffs
      a. Statutory provisions
      b. States as Plaintiffs
      c. The United States as Plaintiff
      d. Corporations as Plaintiff
   2. Defendants
      a. Statutory provisions
      b. States as defendants
      c. The United States as defendant
C. Standing and Mootness  ....................................................................................... 12
   1. Constitutional Limits on Statutory Standing
   2. Individual Standing
   3. Organizational Standing
   4. Standing for Corporations
   5. Standing for Sovereign States
   6. Supreme Court Decisions
   7. Lower court decisions
      a. Standing Denied
      b. Standing Affirmed
   8. Mootness
D. Subject Matter Jurisdiction  .................................................................................. 17
   2. “Ongoing Violations”
      a. Test for Ongoing Violations
      b. Compliance After Complaint Is Filed
      c. Past Violations with Continuing Consequences
   3. Statute of Limitations
   4. No substitute for judicial review
E. Notice  ...................................................................................................................... 20
      a. Exceptions to the notice requirement
   2. EPA Notice Regulations
   3. Purpose of Notice
   4. Hallstrom v. Tillamock County
   5. Lower courts’ response to Hallstrom
F. Diligent Government Prosecution Bar  ................................................................. 21
   1. Statutory provisions
   2. Must the government’s diligent prosecution be “in a court?”
   3. The 1987 CWA Amendments
   4. Will administrative enforcement bar a citizen suit?
   5. What citizen actions are barred by government enforcement?
6. What Constitutes Diligent Prosecution?

G. Intervention .............................................................................................................. 25
1. By the United States
2. By Citizens
3. Intervention as of Right
4. Intervention as Defendant?
5. Department of Justice Policy on Consent Decrees
6. Ancillary Jurisdiction
7. No Prior Notice Required of Intervenors

H. Remedies .................................................................................................................. 26
1. Injunctions
2. Civil Penalties
   a. Penalty amounts
   b. Use of EPA Penalty Policy
   c. Penalties and Mitigation Projects

I. Settlements ................................................................................................................ 28
1. Supplemental Environmental Projects
2. Notice of Consent Decrees to EPA
3. Effect of Settlements on Other Parties
4. Offers of Judgment Pursuant to FRCP 68

J. Attorney Fees .......................................................................................................... 30
1. Statutory provisions
2. Appropriateness of Award
3. Party Entitled to Award
4. Calculation of Fee

VI. RECENT RCRA CITIZEN SUITS................................................................. 32

      (D.C.N.J. 2003), aff’d 399 F. 3d 248 (3d Cir. 2005), 545 U.S. 1129,
      125 S. Ct. 2951, 162 L. Ed. 2d 869 (2005)
      (Me.D.C. 2002)
      App. LEXIS 5359 (10th Cir. Mar. 18, 2003) (unpublished opinion)

VII. CITIZEN SUITS UNDER THE CLEAN AIR ACT................................. 34

VIII. STATE CITIZEN SUIT PROVISIONS.................................................. 35

   A. State Citizen Suit Laws
   B. Standing Requirements under State Citizen Suit Provisions
   C. General State Citizen Suit Statutes
   D. States without General Citizen Statutes

IX. BIBLIOGRAPHY AND REFERENCES ...................................................... 36
I. INTRODUCTION

Citizen suits over the last thirty-five years have had enormous impact in enhancing government enforcement of environmental laws and in spurring government agencies to implement such laws in a creative and expansive manner. They have given citizens a new and expanded role in the governance of the environment. Citizen participation in environmental matters has evolved beyond petitioning government, beyond commenting on proposed governmental actions, to a partnership with government in enforcing environmental laws and in assuring their prompt implementation.

Beginning with the Clean Air Act (CAA) in 1970, Congress enacted “citizen suit” provisions in at least twenty environmental statutes. See, e.g., 42 U.S.C. § 7604 (2000); see Appendix A for list of federal citizen suit provisions. These provisions serve two distinct and significant functions. They authorize "any person" to commence a civil action (1) against any person who "is alleged to have violated" a standard, limitation, or permit under the statute or (2) against the Administrator of the Environmental Protection Agency (EPA) for failure to perform a non-discretionary duty under the statute. See, e.g., 42 U.S.C. § 7604 (2000).

In 1985 the Senate Committee on Environment and Public Works recognized that citizens fulfilled their enforcement role against violators of environmental statutes as intended by these provisions

Citizen suits are a proven enforcement tool. They operate as Congress intended—to both spur and supplement to [sic] government enforcement actions. They have deterred violators and achieved significant compliance gains. In the past two years, the number of citizen suits to enforce NPDES [National Pollutant Discharge Elimination System] permits has surged so that such suits now constitute a substantial portion of all enforcement actions filed in Federal court under this [Clean Water] Act.


The Senate Report addressed citizen suits under the Clean Water Act (CWA). The number of citizen suits that have led to judicial decisions in the last three decades demonstrates that the Senate's conclusion continues to apply to not only the CWA but to other environmental statutes as well. In the thirty years from 1973 to 2002, citizens accounted for over 1,500 reported federal decisions in civil environmental cases. In the decade between 1993 and 2002, seventy-five percent of the reported opinions from federal courts in environmental cases involving the Endangered Species Act, the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act are citizen suits. James R. May, Now More Than Ever: Recent Trends in Environmental Citizen Suits, Widener Law Review, Vol. X:1 at 8. (hereinafter “Recent Trends”).

Citizen suits against government agencies have also achieved significant environmental benefits. They have been described as "private right[s] of initiation," Richard B. Stewart & Cass R. Sunstein, Public Programs and Private Rights, 95 HARV.