An Analysis of Citizen Suit Provisions in Federal Environmental Law

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

Citizen suit provisions began emerging in the 1970s when Congress introduced new environmental laws. After the passage of these laws, citizens gained the power to hold individuals, organizations, and government agencies accountable through these provisions of the law. Citizen suit provisions allow any affected citizen to take action against the offending party under many of the acts listed in this report. Additionally, these suits allow citizens to take action against both state and federal government agencies for failing to enforce environmental regulations that protect clean air and water. Many of the cases listed within this report originated from non-profit organizations acting on behalf of citizens who have been adversely affected by a lack of compliance with federal or state rules. It is because of the adversarial nature of these suits and the ever-changing political climate that these laws remain open to amendment and reinterpretation over time.

It is important for citizens to be educated on relevant environmental laws because citizen suits are major tools for protecting communities. If citizens are unaware of the legal protections afforded to them, there may be less legal action taken against polluters and more pollution degrading the environment in communities. This report helps to educate citizens on how federal courts rule on citizen suits for various environmental laws. The laws included are: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Clean Air Act (CAA), Clean Water Act (CWA), Endangered Species Act (ESA), National Environmental Protection Act (NEPA), Resource Conservation and Recovery Act (RCRA), Safe Drinking Water Act (SDWA), and the Toxic Substances and Control Act (TSCA). Under these laws are summaries of rulings in the Supreme Court and each Circuit Court. This report will essentially provide a compiled resource to examine rulings on citizen suits in federal courts.

As of this writing, several proposed rules and bills, if enacted, could meaningfully impact the landscape of citizen suit litigation under these environmental laws. These proposals include: (1) EPA's proposed rule to rescind the 2009 Greenhouse Gas Endangerment Finding, which would effectively preclude suits seeking to compel greenhouse gas regulation under the CAA; (2) legislative proposals to streamline CWA permitting, which could narrow the timing and scope of citizen challenges; (3) H.R. 180, the *Endangered Species Transparency and Reasonableness Act of 2025*, which would modify listing procedures and attorney-fee disclosure requirements, potentially chilling ESA litigation; and (4) EPA's proposals to revise and roll back several provisions of the TSCA, which would alter how violations of the Act are defined and proven. While these proposals would not directly amend the citizen suit provisions themselves, they would shift the practical reach and effectiveness of citizen enforcement across the federal environmental protection framework.

Citizen suit provisions are embedded within federal environmental statutes including CERCLA, CAA, CWA, ESA, NEPA, RCRA, SDWA, and TSCA. It constitutes a distinctive enforcement mechanism that authorizes private parties to force statutory protections when

administrative enforcement proves inadequate. These provisions typically permit two categories of actions: suits against alleged violators of specific statutory requirements, and suits compelling agency officials to perform mandatory, non-discretionary duties. However, federal courts have consistently construed these provisions narrowly, imposing rigorous procedural prerequisites.

Federal courts have imposed a mandatory 60-day pre-suit notice requirement in most environmental statutes, which serves dual purposes: providing alleged violators an opportunity to achieve voluntary compliance and allowing governmental agencies to initiate enforcement actions that would bar subsequent citizen suits under the "diligent prosecution" exception.

The Supreme Court has further limited citizen suit jurisdiction by requiring allegations of ongoing or prospective violations, thereby precluding suits addressing wholly past violations unless plaintiffs can demonstrate a continuing jurisdictional basis.

Circuit Courts have addressed changes to Article II standing requirements for the citizen suits. Several circuits have adopted relaxed causation and redressability standards for procedural injuries under statutes like NEPA and the ESA, recognizing that environmental harms often result from multiple contributing sources. \

Notwithstanding these limitations, citizen suits have proven instrumental in addressing regulatory gaps, as evidenced by circuit court decisions that have compelled the cleanup of ongoing contamination, enjoined permit violations, and required agency compliance with mandatory statutory duties.

Overall, citizens suits are a powerful mechanism to ensure compliance with environmental laws and regulations. Large polluters or any entities that oppose regulations may always propose to weaken the power to enforce environmental laws. That is why it is important for citizens to be well informed to fight back against attempts to weaken laws that protect communities. As stated above, citizen suits were intentionally included as provisions in environmental laws because our government wanted to give people the power to protect themselves and their communities. The information in this report should aid in providing information to be used when litigating citizen suits.

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT

Summary of the Law

The Comprehensive, Environmental Response, Compensation and Liability Act, enacted in 1980, is a federal law aimed at cleaning up sites contaminated with hazardous substances and pollutants. Often referred to as "Superfund," CERCLA authorizes the federal government—specifically the Environmental Protection Agency—to recover its remediation expenses directly from parties responsible for pollution, and authorizes private parties to pursue contribution or indemnification from potentially responsible parties for expenses incurred responding to environmental threats.[1] Under CERCLA, liability is strict, joint and several, meaning potentially responsible parties (PRPs) can be held accountable regardless of intent or degree of involvement. The law also established a fund to finance cleanup when no responsible party can be identified.

Summary of the Citizen Suit Provision

Section 310 of CERCLA, codified at 42 U.S.C. §9659, authorizes private citizens to bring civil actions to enforce the statute and ensure accountability for hazardous waste contamination.[2] There are two types of citizen suits under CERCLA: (1) suits against any person (including government entities) alleged to be in violation of a CERCLA requirement; and (2) suits against the federal government (specifically the EPA administrator) for failure to perform a non-discretionary duty.

First, under § 9659(a)(1), any person may commence a civil action against "any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the Eleventh Amendment) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this chapter.[3]" This provision allows for private enforcement of CERCLA when, for instance, an entity fails to comply with EPA cleanup orders, fails to properly report hazardous substance releases under § 103, or violates conditions of a settlement agreement or remedial plan. However, this type of action is limited by § 9659(d), which bars citizen suits if the EPA or a State is "diligently prosecuting" a removal or remedial action under CERCLA.[4] Citizens must also provide 60 days' notice to the alleged violator, the EPA, and the state before filing suit, giving agencies a chance to address the violation.

Second, under § 9659(a)(2), citizens may sue the EPA Administrator when there is an alleged failure to perform any non-discretionary duty under CERCLA.[5] For example, if the EPA fails to promulgate regulations or take specific actions required by statute within set timeframes,

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[1] 42 U.S.C. § 9607(a)(4)(A)-(B).
[2] 42 U.S.C.A. § 9659.
[3] § 9659(a)-(d).
[4] *Id.*
[5] *Id.*

citizens may seek judicial enforcement to compel the agency to act.[6] Unlike RCRA's imminent hazard provision, CERCLA does not expressly authorize suits solely based on threats to health or the environment absent a regulatory violation. Instead, citizen suits under CERCLA are anchored in legal noncompliance with orders, standards, or duties established under the Act.

SUPREME COURT HOLDINGS

In *Atlantic Richfield Co.*,[7] landowners within a Montana Superfund site sued under state law seeking additional cleanup remedies beyond what the EPA required. Although CERCLA allows state law claims to proceed in state court, the Supreme Court held that the landowners were "potentially responsible parties" (PRPs) under CERCLA and, as such, must obtain EPA approval before implementing any remediation.[8] The Court explained that CERCLA §122(e)(6) prohibits PRPs from taking remedial action that could conflict with the EPA's chosen cleanup plan.[9] Even though the landowners had not caused the contamination, their ownership of polluted property qualified them as PRPs.[10] The decision affirmed CERCLA's goal of centralized, EPA-directed cleanups while preserving the right to pursue state tort claims, so long as those claims do not interfere with federal cleanup efforts.[11] Thus, the Court struck a balance between federal environmental oversight and state remedies.[12]

CIRCUIT COURT HOLDINGS

1st Circuit (Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island)

In *AVX Corp.*[13], the court held that a citizen suit under CERCLA was barred because the APA had already initiated a cleanup action, and such suits are precluded when the government is diligently prosecuting a cleanup. This emphasizes the limitation on citizen suits when federal actions are underway.[14] The court highlighted the importance of not allowing private litigation to interfere with ongoing federal remediation efforts, reinforcing the need for coordination and preventing duplicative or conflicting relief.[15] The ruling signaled that once the EPA takes active steps under CERCLA, citizen plaintiffs must defer to the agency's authority.

2nd Circuit (Connecticut, New York, Vermont)

In *Prisco*[16] *v. A&D Carting, Inc.*, the Second Circuit addressed the scope of citizen suits under CERCLA and clarified the requirements for bringing a private cost recovery action. The

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[6] *Id.*
[7] *Atlantic Richfield Co. v. Christian*, 590 U.S. 1342 (1st Cir.2020).
[8] *Id.*
[9] *Id.* at 1345.
[10] *Id.* at 1352.
[11] *Id.*
[12] *Id.*
[13] *United States v. AVX Corp.*, 962 F.2d 108 (1st Cir. 1992).
[14] *Id*. at 118
[15] *Id*. at 119
[16] *Prisco v. A&D Carting Corp*, 168 F.3d 593 (2d Cir. 1999).

plaintiffs alleged that the defendants were responsible for the improper disposal of hazardous waste at the Consolidated Iron and Metal scrap processing facility in Newburgh, New York.[17] The court emphasized that to prevail under § 107(a) of CERCLA, a plaintiff must prove: (1) the defendant is a potentially responsible party (PRP); (2) a release or threatened release of a hazardous substance occurred; (3) the release caused the plaintiff to incur response costs; and (4) the costs incurred were necessary and consistent with the National Contingency Plan.[18] The Second Circuit rejected the defendants' argument that the plaintiffs' costs were not recoverable because they had not been formally approved by the EPA, holding that private parties can recover costs so long as they are consistent with the National Contingency Plan.[19] The court also addressed the standing requirements for citizen suits under § 113(f), holding that contribution actions could only be maintained against other liable parties after a party had itself been held liable or settled its CERCLA liability.[20] Ultimately, the court remanded the case to the district court for further proceedings regarding the allocation of costs and liability among the defendants.[21]

3rd Circuit (Delaware, New Jersey, Pennsylvania, Virgin Islands)

In *Giovanni*[22], residents from Horsham Township, Pennsylvania sued the Navy for groundwater contamination caused by perfluorinated compounds from firefighting foam. The plaintiffs sought medical monitoring and other relief based on state tort law claims.[23] The Third Circuit dismissed the case, citing CERCLA §113(h), which bars challenges to ongoing EPA response actions.[24] The court emphasized that citizen suits are not a means to interfere with the government's remediation strategy under CERCLA.[25] It reinforced the principle that courts will defer to EPA-led clean-ups unless the action is completed or absent.[26]

[17] *Id.* at 597.
[18] *Id.* at 602–03.
[19] *Id.* at 603.
[20] *Id.* at 604.
[21] *Id.* at 605.
[22] *Giovanni v. U.S. Dep't of the Navy*, 906 F.3d 94 (3d Cir. 2018).
[23] *Id*. at 98.
[24] *Id.* at 101-02.
[25] *Id*. at 103.
[26] *Id*. at 104.

4th Circuit (Maryland, North Carolina, South Carolina, Virginia, West Virginia)

Nothing specifically in the fourth circuit that encompasses direct civilian suits but more so arranger liability.

5th Circuit (Louisiana, Mississippi, Texas)

The fifth circuit has heard numerous CERCLA-related cases, there are no significant cases that speak directly to the citizen suit provisions of CERCLA under § 9659. Most CERCLA cases in the Fifth Circuit deal with cost recovery, contribution, and liability allocation among potentially responsible parties (PRPs), or procedural and jurisdictional issues like removal actions and preemption, rather than private citizens suing under the citizen suit provision.

6th Circuit (Kentucky, Michigan, Ohio, Tennessee)

In *Walls*[27], the Sixth Circuit recognized that private citizens could pursue a cause of action under CERCLA where government remediation was lacking or inadequate. Plaintiffs alleged that toxic waste had been improperly disposed of on a landfill site, leading to contamination of nearby property and posing a serious threat to public health.[28] The court acknowledged that while CERCLA primarily empowers the government to pursue cleanups and recover costs, it also provides a private right of action in certain circumstances.[29] The court emphasized that CERCLA's broad remedial purpose—to ensure prompt and effective cleanup of hazardous waste sites—supported interpreting the statute to permit citizen suits in the absence of diligent governmental response.[30] This decision affirmed the viability of CERCLA's citizen suit provision as a tool for environmental accountability, enabling individuals to seek judicial relief when contamination is not adequately addressed by federal or state authorities.[31]

7th Circuit (Illinois, Indiana, Wisconsin)

In *Frey*[32] citizens challenged the EPA's remediation plan for hazardous waste contamination at a site in Illinois. The plaintiffs argued that the EPA's approach to the cleanup was insufficient and that they should be allowed to seek alternative remedies.[33] The Seventh Circuit, however, dismissed the suit, holding that under CERCLA § 113(h), challenges to ongoing EPA cleanups are barred.[34] The court emphasized that Congress had expressly limited the ability of private parties to sue while the EPA is actively conducting a cleanup, in order to avoid interference with federal efforts.[35] This ruling reinforced the procedural barriers to citizen

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[27] *Walls v. Waste Resource Corp*., 761 F.2d 311 (6th Cir. 1985).
[28] *Id*. at 313.
[29] *Id.* at 317–18.
[30] *Id.* at 318; see also H.R. Rep. No. 96-1016, pt. 1, at 22 (1980) (noting the goal of encouraging private enforcement).
[31] *Walls*, 761 F.2d at 318.
[32] *Frey v. EPA*, 270 F.3d 1129,1132 (7th Cir. 2001).
[33] *Id*.
[34] *Id*. at 1133.
[35] Id. at 1133–34.

suits under CERCLA when the EPA has taken the lead in remediation efforts, emphasizing the statute's purpose to centralize cleanup authority within the federal government.[36]

8th Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota)

The Eighth Circuit does not have significant case law that directly addresses or discusses citizen suits under CERCLA. The circuit focuses more on other aspects of CERCLA, such as liability for hazardous waste disposal or cleanup issues but does not typically rule on private enforcement actions under the citizen suit provision. In general, citizen suits are less frequently discussed in this circuit, especially compared to others, and CERCLA-related cases tend to be more focused on federal agencies' involvement or liability for cleanup responsibilities.

9th Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington)

The Ninth Circuit, similarly, does not have a significant body of case law directly addressing citizen suits under CERCLA. While the court has dealt with broader issues regarding hazardous waste, liability, and federal involvement in cleanup actions (such as in *Pakootas v. Teck Cominco Metals, Ltd*, which involved the jurisdictional limits of CERCLA[37]), it has not frequently ruled on the applicability or limitations of the citizen suit provision specifically.

10th Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming)

There are no major Tenth Circuit decisions squarely addressing or interpreting the citizen suit provision of CERCLA. This suggests that while courts in the Tenth Circuit have considered CERCLA liability and cost recovery in depth, citizen-initiated enforcement actions under § 9659 have either not been heavily litigated or not reached the appellate level in this jurisdiction. As a result, the controlling precedent in the Tenth Circuit does not directly define the scope or limits of CERCLA citizen suits at this time.

11th Circuit (Alabama, Florida, Georgia)

In *Pinares*, the plaintiffs sought to bring CERCLA claims against United Technologies for contamination from hazardous substances.[38] The court affirmed the dismissal of the claims, ruling that the plaintiffs' claims were time-barred under CERCLA's statute of limitations.[39] Specifically, the court emphasized that CERCLA § 113(g)(2) establishes a three-year statute of limitations for claims based on response actions, starting from the date the plaintiff knew or should have known of the contamination and its connection to the defendant.[40] The plaintiffs argued that ongoing harm justified an exception to the limitations period, but the court disagreed,

[36] *Id.* at 1134.
[37] *Pakootas v. Teck Cominco Metals*, *Ltd*., 905 F.3d 565 (9th Cir. 2018).
[38] *Pinares v. United Technologies Corp*., 973 F.3d 1254, 1257 (11th Cir. 2020).
[39] *Id.* at 1258.
[40] *Id.* at 1259 (citing 42 U.S.C. § 9613(g)(2)).

holding that the claims were untimely filed.[41] The court underscored that even in cases involving ongoing harm, strict adherence to statutory deadlines is required under CERCLA.[42] This decision highlights the importance of timely filing in citizen suits under CERCLA, reinforcing that courts will not entertain claims that fail to meet the statutory filing deadlines.[43] The ruling also demonstrates the court's commitment to enforcing procedural rules in environmental litigation, ensuring that claimants comply with the deadlines to maintain the integrity of the legal process.[44]

D.C. Circuit

The D.C. Circuit has not issued any major decisions directly involving CERCLA citizen suits. Instead, the court primarily hears administrative law cases challenging EPA regulations or actions brought by corporations, trade groups, or governmental entities. As such, while the D.C. Circuit plays a critical role in interpreting the scope of EPA's authority under CERCLA, it has not developed a substantial body of case law on private citizen enforcement actions.

Federal Circuit

The Federal Circuit does not typically adjudicate CERCLA citizen suits however it has addressed CERCLA-related liability in the context of contractual disputes, it has not developed case law concerning citizen suits brought under CERCLA's enforcement provisions.

[41] *Id.* at 1260.
[42] *Id.* at 1261.
[43] *Id.* at 1262.
[44] *Id.*

CLEAN AIR ACT

Summary of the Law

The Clean Air Act (CAA), codified at 42 U.S.C. § 7401 et seq., is the comprehensive federal law that regulates air emissions from stationary and mobile sources in the United States.[45] Enacted in 1970 and amended in 1977 and 1990, the CAA authorizes the Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards (NAAQS) to protect public health and the environment.[46] The Act requires states to develop State Implementation Plans (SIPs) to achieve these standards, addressing pollutants such as sulfur dioxide (SO_2), particulate matter (PM), carbon monoxide (CO), ozone (O_3), nitrogen dioxide (NO_2), and lead (Pb).[47] Additionally, the CAA mandates the regulation of hazardous air pollutants, sets emission standards for mobile sources like vehicles, and addresses issues such as acid rain, ozone layer depletion, and regional haze.[48]

Summary of the Citizen Suit Provision

Section 304 of the Clean Air Act, codified at 42 U.S.C. § 7604, empowers citizens to file lawsuits to enforce the Act's provisions.[49] Specifically, individuals may commence civil actions against any person, including the United States and governmental agencies, alleged to have violated (or be in violation of) an emission standard or limitation under the Act.[50] Citizens can also sue the EPA Administrator for failing to perform any non-discretionary act or duty required by the CAA.[51] Before filing such a suit, plaintiffs must provide a 60-day notice to the alleged violator and the EPA, allowing time for potential resolution. This provision enhances public participation in environmental enforcement and ensures compliance with air quality standards.

SUPREME COURT HOLDINGS

In *West Virginia*, the Court held that the EPA exceeded its statutory authority under the CAA, siding with the state and industry challengers.[52] In this case, West Virginia and other petitioners challenged the EPA's Clean Power Plan, which had aimed to reduce emissions from power plants by requiring generation-shifting from coal to cleaner sources.[53] The Court applied the "major questions doctrine," finding that such transformative regulatory action requires clear

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[45] Clean Air Act, 42 U.S.C. § 7401.
[46] U.S. Environmental Protection Agency, Summary of the Clean Air Act, EPA.gov, https://www.epa.gov/laws-rSegulations/summary-clean-air-act (last visited April 8, 2025).
[47] *Id.*
[48] *Id.*
[49] 42 U.S.C. § 7604.
[50] *Id.*
[51] *Id.*
[52] *West Virginia v. EPA*, 597 U.S. 697, 723 (2022).
[53] *Id.* at 699.

congressional authorization, which was absent.[54] Thus, the Court concluded that EPA's authority under the CAA is limited to measures explicitly granted by Congress, narrowing the scope of potential regulatory action that might otherwise be enforced through citizen suits.[55]

In *American Electric Power*, the Court held that the CAA displaced any federal common law claim for abating greenhouse gas emissions, ruling against the citizens.[56] In this case, several states and nonprofits sued major electric power companies under federal common law nuisance, seeking to cap and reduce carbon dioxide emissions contributing to climate change.[57] The Court held that because the CAA authorizes the EPA to regulate greenhouse gases, that statutory scheme displaces federal common law remedies.[58] Thus, the court concluded that plaintiffs seeking emissions reductions must proceed under the CAA, including its citizen suit provision, rather than through the judiciary's creation of common law.[59]

In *Massachusetts*, the Court held in favor of the citizens, finding that the EPA has authority to regulate greenhouse gases under the CAA.[60] In this case, Massachusetts and other states challenged EPA's refusal to regulate carbon dioxide emissions from new motor vehicles.[61] The Court determined that greenhouse gases fall within the Act's broad definition of "air pollutant," and that EPA's inaction was arbitrary and capricious.[62] Thus, the court concluded that citizens may invoke the CAA—including the citizen suit provision—to compel EPA to regulate greenhouse gas emissions in accordance with the statute.[63]

CIRCUIT COURT HOLDINGS

** Note that the absence of recent notable cases in certain circuits does not imply a lack of Clean Air Act litigation but may indicate that such cases have not reached the circuit court level or have not been prominently reported.*

1st Circuit (Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island)

In *Conservation Law Foundation*, the court held in favor of the citizens.[64] In this case, the Conservation Law Foundation (CLF) sued Academy Express, alleging that the company violated the Clean Air Act by idling its buses beyond allowable limits in Massachusetts and Connecticut,

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[54] *Id.* at 724.
[55] *Id.*
[56] *American Electric Power Co. v. Connecticut*, 564 U.S. 410, 424 (2011).
[57] *Id.* at 415.
[58] *Id.* at 424.
[59] *Id.*
[60] *Massachusetts v. EPA*, 549 U.S. 497, 528 (2007).
[61] *Id.*
[62] *Id.* at 534.
[63] *Id.*
[64] *Conservation Law Found., Inc. v. Acad. Express, LLC*, 129 F.4th 78, 82 (1st Cir. 2025).

which allegedly harmed CLF members by exposing them to polluted air.[65] The district court granted summary judgment for Academy, finding that CLF lacked associational standing because the alleged injuries were not sufficiently traceable to Academy's conduct or concrete.[66] Thus, the First Circuit reversed the district court's ruling and remanded the case, holding that breathing polluted air and reasonable fear of health consequences are cognizable injuries-in-fact, and that traceability can be shown through geographic proximity and expert testimony even in the presence of other pollution sources.[67]

2nd Circuit (Connecticut, New York, Vermont)

In *City of New York*, the court held against the citizens.[68] In this case, New York City sued five multinational oil companies under state tort law, seeking damages for harms caused by global warming, which it argued were caused by the companies' greenhouse gas emissions.[69] The City claimed that these fossil fuel producers should bear financial responsibility for global warming harms rather than the City's taxpayers.[70] Thus, the court concluded that the claims were barred, holding that global warming presents an international concern governed by federal common law, which is displaced by the CAA.[71] The court further noted that the regulation of greenhouse gas emissions lies within the authority of the EPA, and that allowing claims based on foreign emissions would intrude on matters of foreign policy without congressional authorization.[72]

3rd Circuit (Delaware, New Jersey, Pennsylvania, Virgin Islands)

In *Group Against Smog and Pollution*, the court held against the citizens.[73] In this case, the Group Against Smog and Pollution (GASP) filed a citizen suit under the CAA alleging that Shenango violated emissions standards at its coke plant on Neville Island, Pennsylvania.[74] However, both the EPA and local agencies had already entered into a 2012 federal Consent Decree and a 2014 state Consent Order addressing the same violations, which remained enforceable and ongoing at the time of the suit.[75] Thus, the court concluded that the citizen suit was barred under the "diligent prosecution" provision of the CAA, finding that the existing

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[65] *Id.*
[66] *Id.*
[67] *Id.* at 87-90.
[68] *City of N.Y. v. Chevron Corp.*, 993 F.3d 81, 86 (2d Cir. 2021).
[69] *Id.* at 86.
[70] *Id.*
[71] *Id.* at 99-100.
[72] *Id.* at 100-01.
[73] *Group Against Smog and Pollution v. Shenango Inc.*, 810 F.3d 116, 120 (3d Cir. 2016).
[74] *Id.*
[75] *Id.* at 120-21.

government actions required compliance with the Act and were being actively pursued, even though litigation had formally concluded.[76]

4th Circuit (Maryland, North Carolina, South Carolina, Virginia, West Virginia)

In *In re McCarthy*, the court did not reach the merits of the alleged Clean Air Act violation but addressed procedural limits in a citizen suit under the Act.[77] The plaintiffs alleged that EPA violated Section 321(a) of the Clean Air Act, 42 U.S.C. § 7621(a), by failing to conduct ongoing evaluations of job losses resulting from the enforcement of the Act.[78] The Fourth Circuit affirmed that § 321(a) imposes a non-discretionary duty enforceable under the citizen suit provision, 42 U.S.C. § 7604(a).[79] However, the court granted EPA's petition for writ of mandamus, holding that deposing EPA Administrator Gina McCarthy was not justified absent extraordinary circumstances.[80] The court emphasized that plaintiffs must rely on permissible discovery methods, such as agency documents or a 30(b)(6) deposition, when seeking to enforce substantive duties under the Clean Air Act.[81]

5th Circuit (Louisiana, Mississippi, Texas)

In *Environment Texas Citizen Lobby*, the court held that the citizens had standing to bring a CAA suit and could recover civil penalties for repeated permit violations.[82] In this case, the plaintiffs alleged that ExxonMobil committed over 16,000 CAA violations at its Baytown Complex, one of the largest petrochemical facilities in the nation, which includes an oil refinery, an olefins plant, and a chemical plant.[83] The violations involved unauthorized emissions of harmful pollutants such as sulfur dioxide (SO_2), volatile organic compounds (VOCs), carbon monoxide (CO), and particulate matter (PM).[84] Plaintiff citizens claimed that these violations harmed the plaintiffs' members who lived, worked, or recreated nearby.[85] The court concluded that civil penalties under the CAA serve a deterrent purpose and can be awarded even for past violations, so long as plaintiffs demonstrate injury traceable to the emission standard at issue.[86]

6th Circuit (Kentucky, Michigan, Ohio, Tennessee)

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[76] *Id.* at 120.
[77] *In re McCarthy*, 636 F. App'x 142 (4th Cir. 2015).
[78] *Id.* at 142-43.
[79] *Id.*
[80] *Id.* at 143.
[81] *Id.* at 144.
[82] *Environment Texas Citizen Lobby, Inc. v. ExxonMobil Corp.*, 123 F.4th 309 (5th Cir. 2024) (en banc); *Environment Texas Citizen Lobby, Inc. v. ExxonMobil Corp.*, 66 F.4th 760 (5th Cir. 2023) (cert. denied, U.S. 2025).
[83] *Environment Texas Citizen Lobby, Inc. v. ExxonMobil Corp.*, 824 F.3d 507, 512 (5th Cir. 2016).
[84] *Id.*
[85] *Id.* at 512.
[86] *Id.*

In *Sierra Club,* the court held that petitioners had standing to challenge the EPA's removal of Ohio's Air Nuisance Rule (ANR) from its State Implementation Plan (SIP) and remanded the agency's decision for further review without vacating it—the court agreed with the citizen groups.[87] In this case, Sierra Club and others relied on the ANR, which had been enforceable under the CAA for nearly 50 years, to pursue and threaten citizen enforcement actions for violations of air quality standards related to pollutants like sulfur dioxide and particulate matter.[88] The EPA removed the ANR, arguing it was mistakenly approved and had no connection to implementing or maintaining the National Ambient Air Quality Standards (NAAQS).[89] Thus, the court concluded that the EPA failed to adequately justify the removal under the CAA's error-correction provision and that the removal impeded citizen enforcement rights under the Act.[90]

7th Circuit (Illinois, Indiana, Wisconsin)

In *McEvoy*, the court held that the plaintiffs could not bring a citizen suit under the CAA to enforce Illinois's Prohibition of Air Pollution and Fugitive Particulate Matter regulations.[91] In this case, residents and businesses near a coal-loading facility in East Dubuque, Illinois, alleged that coal dust from the facility polluted the air and landed on their property, violating two Illinois environmental regulations.[92] They brought suit under the CAA's citizen-suit provision, arguing these state regulations were enforceable through the CAA because they were part of Illinois's EPA-approved SIP.[93] Thus, the court concluded that while SIP provisions can in some cases be enforceable through citizen suits under § 7604(f)(4), the two particular Illinois regulations at issue were too vague and lacked sufficiently specific, objective standards to be judicially enforceable under the Act.[94]

8th Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota)

In *Nucor Steel*, the court held that the CAA's citizen-suit provision does not authorize a collateral attack on a facially valid state-issued preconstruction permit—thus, the court disagreed with the citizens.[95] In this case, Nucor, a competitor of Big River, brought a citizen suit alleging that Big River's construction of a steel mill violated the CAA because the Arkansas-issued PSD permit was invalid under both the federal statute and the SIP.[96] Nucor sought to enjoin construction, arguing Big River failed to meet SIP and PSD requirements and that ongoing

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[87] *Sierra Club v. U.S. EPA*, 60 F.4th 1008, 1012 (6th Cir. 2023).
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *McEvoy v. IEI Barge Servs.*, 622 F.3d 671, 679 (7th Cir. 2010).
[92] *Id.* at 672.
[93] *Id.*
[94] *Id.* at 680.
[95] *Nucor Steel-Ark. v. Big River Steel, LLC*, 825 F.3d 444, 452 (8th Cir. 2016).
[96] *Id.* at 448.

construction was therefore unlawful.[97] Thus, the court concluded that a CAA citizen suit cannot be used to challenge permit validity after issuance; such claims must proceed through administrative and judicial review processes under the Act, not through § 7604 citizen-suit enforcement mechanisms.[98]

9th Circuit (Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington)

In *Committee for a Better Arvin*, the court held that the EPA violated the CAA by approving California's SIPs without including enforceable state mobile emissions standards (waiver measures) that the SIPs relied upon — the court agreed in part with the citizen petitioners.[99] In this case, California's plans to meet national ambient air quality standards for ozone and fine particulate matter in the San Joaquin Valley relied on emission reductions from state-adopted vehicle standards, but those standards were not incorporated into the SIP and were thus not federally enforceable.[100] Petitioners argued this violated the CAA's requirement that all enforceable control measures relied on for compliance be included in the SIP.[101] The court granted the petition in part and remanded to EPA, holding that waiver measures must be included in SIPs to be enforceable under the citizen suit provision of the CAA (42 U.S.C. § 7604).[102]

10th Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming)

In *Physicians for a Healthy Environment*, the court held that private citizens may enforce CAA provisions and SIP regulations through citizen suits when defendants violate federally enforceable anti-tampering and defeat device prohibitions.[103] In this case, a nonprofit organization sued diesel truck companies for removing emissions-control devices and selling or installing defeat parts in violation of both Title II of the CAA and Utah's EPA-approved SIP.[104] The court affirmed that these violations were actionable under the CAA's citizen suit provision, but limited standing to claims arising from vehicles or parts that polluted air in Utah's Wasatch Front.[105] Thus, the court upheld the citizen group's standing and enforcement rights under 42 U.S.C. § 7604, clarified that SIP-based and Title II violations are both enforceable by citizens, and remanded for reconsideration of penalties not tied to emissions within the affected nonattainment area.[106]

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[97] *Id.*
[98] *Id.* at 449-50.
[99] *Comm. for a Better Arvin v. U.S. EPA*, 786 F.3d 1169, 1177-78 (9th Cir. 2015).
[100] *Id.* at 1173.
[101] *Id.*
[102] *Id.* at 1181-82.
[103] *Physicians for a Healthy Env't v. Diesel Power Gear, LLC*, 21 F.4th 1229, 1230 (10th Cir. 2021).
[104] *Id.* at 1234-35.
[105] *Id.* at 1244-46.
[106] *Id.* at 1256-57.

11th Circuit (Alabama, Florida, Georgia)

In *Alabama Environmental Council*, the court held that the EPA's 2011 disapproval of Alabama's SIP revision was unauthorized and invalid, and affirmed the EPA's original 2008 approval of the SIP revision—thus siding with industry rather than the citizen petitioners.[107] In this case, citizens challenged the EPA's 2008 approval of a revision to Alabama's CAA SIP, arguing the revision would allow excess particulate pollution by relaxing visible emissions (opacity) limits.[108] The EPA later reversed course and disapproved the revision in 2011, but failed to follow the CAA's required procedures for correcting an error in SIP approval, particularly by not providing a proper "error determination" under § 110(k)(6).[109] Thus, the court vacated the 2011 disapproval and upheld the 2008 approval, holding that EPA must comply with statutory procedures if it seeks to revise previously approved SIP provisions.[110]

D.C. Circuit (District of Columbia)

In *Louisiana Environmental Action Network*, the court held that the EPA violated the CAA by failing to revise a source category's emission standard to include limits for all hazardous air pollutants (HAPs) emitted by that category—agreeing with the citizen petitioners.[111] In this case, environmental organizations challenged the EPA's 2017 Rule reviewing emissions from pulp mill combustion sources, arguing that EPA failed to add limits for numerous HAPs the source category was known to emit but had previously left unregulated.[112] Thus, the court concluded that section 112(d)(6) of the CAA requires the EPA, during its periodic reviews, to revise emission standards to include controls for all listed air toxics emitted by the source category and remanded the rule without vacatur for EPA to set the missing limits.[113]

Federal Circuit

The U.S. Court of Appeals for the Federal Circuit does not have jurisdiction over environmental citizen suits under the Clean Air Act. Its jurisdiction is limited to specific subject matter areas such as patent law and claims against the federal government under the Tucker Act.

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[107] *Ala. Envtl. Council v. Adm'r, U.S. EPA*, 711 F.3d 1277, 1292 (11th Cir. 2013).
[108] *Id.* at 1279.
[109] *Id.* at 1280.
[110] *Id.* at 1292-93.
[111] *La. Envtl. Action Network v. EPA*, 955 F.3d 1088, 1091 (D.C. Cir. 2020)
[112] *Id.* at 1091.
[113] *Id.*

CLEAN WATER ACT

Summary of the Law

The Clean Water Act is based on the Federal Water Pollution Control Act of 1948. The latter underwent significant reorganization and was passed by Congress as the Clean Water Act (CWA) in 1972. The CWA is a federal law that regulates discharges of pollutants into "waters of the United States." Its aim is to prevent, reduce, and eliminate pollution in the "waters of the United States". The Act achieves this goal primarily through two permitting programs: Section 402 of the CWA created the National Pollutant Discharge Elimination System (NPDES), which requires permits for the discharge of pollutants from point sources into navigable waters. The NPDES program is administered by the Environmental Protection Agency (EPA), although states may assume authority if approved. Section 404 authorizes U.S. Army Corps of Engineers, in coordination with the EPA, to issue permits for the discharge of dredged or fill material into waters of the United States, including wetlands. Together, Sections 402 and 404 provide a comprehensive permitting framework to control water pollution and protect aquatic environments.

Summary of the Citizen Suit Provision

The Clean Water Act includes a citizen suit provision codified at 33 U.S. Code § 1365. Under this provision, any citizen may bring a civil action against (1) any person, including governmental entities, who is alleged to be in violation of an effluent standard of limitation under the Act and (2) the Administrator of the EPA for failing to perform a non-discretionary duty under the Act. Importantly, this citizen suit provision applies to both the NPDES permit violations under Section 402 and to illegal discharges or violations related to Section 404 permits, which govern dredge and fill activities.

SUPREME COURT HOLDINGS

In *Friends of the Earth*, Laidlaw Environmental Services, Inc. (Laidlaw) operated a waste facility plant which discharged pollutants into a nearby river.[114] Laidlaw had a discharge permit but exceeded its permit limits hundreds of times. Friends of the Earth, a grassroots environmental organization, along with two other environmental groups, brought suit under the Clean Water Act (CWA). The court held that the petitioners had standing to bring the case because they

[114] *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 167 (2000).

demonstrated an injury in fact. Friends of the Earth successfully argued for standing by showing that their members' recreational, aesthetic, and economic interests were jeopardized.[115]

Additionally, in *Decker*, where The EPA had interpreted the Rule - 33 U.S.C. § 1342(p)- as not applying to runoff from logging roads, the court held that federal courts must defer to a federal agency's reasonable interpretation of its own ambiguous regulations.[116] Here, the court reasoned that use of logging trucks was directly related to the harvesting of raw materials rather than to the manufacturing, processing, or raw-materials storage areas at industrial plants; EPA's interpretation of the rule was reasonable and therefore, permissible.

CIRCUIT COURT HOLDINGS

1st Circuit- (Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico)

In *Conservation Law Foundation*, Users of waterways and coastal wetlands, and organizations to which they belonged brought action against the United States Environmental Protection Agency (EPA), challenging the EPA's approval under Clean Water Act (CWA) of thirteen total maximum daily loads (TMDLs).[117] The court dismissed the suit, ruling that the agency's discretion in such matters is not subject to citizen enforcement.[118]

2nd Circuit- (Connecticut, New York, Vermont)

In *Atlantic States Legal Foundation, Inc.*, Eastman Kodak Company (Kodak) operated a wastewater treatment plant in Rochester, NY, to purify waste produced in the manufacture of photographic supplies and other lab chemicals. The purified water was then discharged into a nearby creek and river. Atlantic, a non-profit environmental interest group, filed suit in federal court against Kodak alleging that Kodak was discharging pollutants not listed in its National Pollutant Discharge Elimination System (NPDES) permit or in its State Pollutant Discharge Elimination System (SPDES) permit. Kodak signed an agreement to pay a penalty of $1 million, $200,000 of which was allocated to water pollution violations at the Rochester facility and another $200,000 of which was allocated to other violations of its permit.[119] The lower court dismissed the case because Kodak and state authorities entered into a settlement agreement. This court reversed and remanded the case, holding that if Kodak could be found to be violating, or, that the terms of their settlement are such that a realistic prospect of continuing violations exists,

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[115] *Id.* at 169.
[116] *Decker v. Nw. Env't Def. Ctr.*, 568 U.S. 601, 613 (2013).

[117] *Conservation Law Foundation v. EPA* (D. R.I. 2016).
[118] *Id.*
[119] *Atl. States Legal Found., Inc. v. Eastman Kodak Co.*, 933 F.2d 124, 126 (2d Cir. 1991).

that Atlantic would have standing to pursue relief under the CWA. If not, the case should be dismissed.[120]

3rd Circuit- (Delaware, New Jersey, and Pennsylvania)

In S*hark River Cleanup Coal.*, the 3rd Circuit affirmed the dismissal of a citizen suit due to deficiencies in the plaintiff's notice. The court found that the notice failed to provide sufficient information to identify the specific standard, limitation, or order alleged to have been violated, as required by 40 C.F.R. § 135(a). The notice's broad references to unrelated statutes and regulations left the defendants unable to ascertain the claimed violation.[121]

Additionally, in *Lower Susquehanna Riverkeeper*, Lower Susquehanna Riverkeeper and the Lower Susquehanna Riverkeeper Association brought a CWA action against company that owned and operated a poultry rendering facility that generated industrial wastewater, alleging that company had discharged and continued to discharge pollutants into waters of the United States. The court held that because Keystone did not dispute the daily number of violations, the court granted part of Plaintiffs' motion for partial summary judgment concerning Keystone's liability for its daily maximum violations.[122]

4th Circuit- (Maryland, North Carolina, South Carolina, Virginia, West Virginia)

In *Simkins Industries*, environmental groups brought a citizen suit alleging that the holder of the national pollution discharge elimination system (NPDES) permit had violated and would continue to violate the conditions of the permit. Although Simkins conceded 150 violations within a three-year period, they argued that in order for the citizens to have standing, they must have been "continually violating at the time the suit was brought.[123] The court held that the evidence presented supported the district court's finding of ongoing violations; that litigation of penalties imposed for past violations which were linked with ongoing violation presented live case or controversy; but that district court had no jurisdiction to impose penalties for permittee's wholly past chlorine violations.[124]

5th Circuit- (Louisiana, Mississippi, Texas)

In *Sierra Club, Lone Star Chapter*, plaintiffs sued seeking to prevent discharges of produced water from waste treatment facility into a bay. The court upheld the plaintiff environmental group's standing to sue under § 1365 of the CWA, holding that the defendant oil company violated the Act by discharging produced water into Galveston Bay without a permit.[125]

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[120] *Id.* at 128.
[121] *Shark River Cleanup Coal. v. Twp. of Wall*, 47 F.4th 126, 136 (3d Cir. 2022).
[122] *Lower Susquehanna Riverkeeper v. Keystone Protein Co.*, 520 F. Supp. 3d 625 (M.D. Pa. 2021).
[123] *Chesapeake Bay Found., Inc. v. Gwaltney of Smithfield, Ltd.*, 890 F.2d 690, 692 (4th Cir. 1989).
[124] *Id.* at 698.
[125] *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co. Inc.*, 73 F.3d 546, 568–69 (5th Cir. 1996).

6th Circuit- (Kentucky, Michigan, Ohio and Tennessee)

In *Greene*, a citizen sued the EPA administrator under § 505(a)(2) of the CWA, alleging failure to address point-source discharges violating § 301. The court dismissed the case, holding that the EPA's actions under § 309(a)(3) were discretionary and that the plaintiff failed to provide the required 60-day notice of intent to sue under § 505(b)(2).[126]

In *DP Marina, LLC*, the court held that although the plaintiff complied with the CWA's notice provisions, it failed to notify the government of its intent to challenge a valid consent decree and did not pursue the proper avenue for post-decree CWA relief.[127] In *DP Marina, LLC*, the Plaintiff brought a citizen suit under the CWA against the City of Chattanooga, alleging "unlawful and/or unpermitted sewage and wastewater discharges into Browns Ferry Marina." [128] The court reasoned that "Plaintiff cannot, based on binding Sixth Circuit precedent, pursue its post-decree violations in its pre-existing citizens' suit, the Court must GRANT Defendant's Motion for Judgment on the Pleadings to those claims."[129]

7th Circuit- (Illinois, Indiana, Wisconsin)

In *Atlantic States Legal Found.*, the 7th Circuit reversed a district court's grant of summary judgment, holding that the plaintiff environmental group provided sufficient notice to the defendant regarding its claims under the CWA. The court emphasized that the notice requirement under § 1365. Citizen suits is intended to allow alleged violators an opportunity to comply with the Act, and the plaintiff was entitled to proceed with claims related to ongoing or intermittent violations of discharge permits.[130]

8th Circuit- (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota)

In *City of Green Forest,* the court held that the CWA prioritizes government enforcement over citizen suits and held that the court properly dismissed the CWA claims against the city based on res judicata. hold further that the court properly dismissed the CWA claims against the City based on res judicata.[131]

9th Circuit- (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington)

In *Southeast Alaska Conservation Council,* conservation groups brought an injunction action against United States Army Corps of Engineers, Corps officials, and the United States Forest Service, alleging that permit issued by Corps to intervenor mining company to construct

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[126] *Greene v. Reilly*, 956 F.2d 593, 593 (6th Cir. 1992).
[127] *DP Marina, LLC v. City of Chattanooga*, 41 F. Supp. 3d 682, 693, 694 (E.D. Tenn. 2014).
[128] *Id.* at 684.
[129] *Id.* at 694.
[130] *Atl. States Legal Found. v. Stroh Die Casting Co.*, 116 F.3d 814 (7th Cir. 1997).
[131] *U.S. E.P.A. v. City of Green Forest, Ark.,* 921 F.2d 1394, 1411 (8th Cir. 1990).

disposal facility violated Clean Water Act (CWA). The court held that construction of the facility would adversely affect the environment; and that both the balance of hardships and public interest favored injunction.[132]

10th Circuit- (Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming)

In *Stone*, where the court addressed a citizen suit under the CWA, the court held that the district court erred in concluding that evidence of a gold mining company discharging pollutants into groundwater was sufficient to show the functional equivalent of a direct discharge into a river. The court emphasized the need to consider all geophysical factors, including the Maui factors, such as pollutant dilution and chemical changes during travel, to determine compliance with § 1311. Effluent limitations and 1362(12).[133]

11th Circuit- (Alabama, Florida and Georgia)

In *National Envtl. Found.*, the 11th Circuit affirmed the dismissal of a citizen suit due to the plaintiff's failure to comply with the mandatory 60-day notice requirement under § 1365. The court held that the notice requirement was a mandatory condition precedent to filing a citizen suit and that the plaintiff's action, alleging violations of § 1311. Toxic and pretreatment effluent standards were properly dismissed for noncompliance.[134]

D.C. Circuit (District of Columbia)

In *Kingman Park Civic Ass'n*, the court addressed a citizen suit under the CWA to compel the EPA to disapprove the District of Columbia's water quality submissions and establish Total Maximum Daily Loads (TMDLs) for polluted waters. The court denied the EPA's motion to dismiss for one count, citing the agency's prolonged inaction despite statutory mandates, but dismissed another count as duplicative. The case highlighted the EPA's duty to act when states fail to meet their obligations under the CWA.[135]

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[132] *Se. Alaska Conservation Council v. U.S. Army Corps of Eng'rs,* 472 F.3d 1097, 1097 (9th Cir. 2006).
[133] *Stone v. High Mt. Mining Co.*, LLC, 89 F.4th 1246.
[134] *Nat'l Envtl. Found. v. ABC Rail Corp.*, 926 F.2d 1096, 1099 (11th Cir. 1991).
[135] *Kingman Park Civic Ass'n v. U.S. EPA*, 84 F. Supp. 2d 1, 2 (D.D.C. 1999).

ENDANGERED SPECIES ACT

Summary of the Law

The Endangered Species Act (16 U.S.C. 1531 et seq.) was passed in 1973 with the purpose of protecting endangered species.[136] In their findings of the statute Congress acknowledged the fact that certain species of animals have been rendered extinct because of the country's economic growth. The purpose of the statute is not only to protect endangered species but also to preserve the ecosystems in which these animals reside. The statute includes a pledge to take the appropriate steps to achieve this purpose from various treaties which include migratory bird treaties with Canada and Mexico; the Migratory and Endangered Bird Treaty with Japan; the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere; the international Convention for the Northwest Atlantic Fisheries; the International Convention for the High Seas Fisheries of the North Pacific Ocean; the Convention on International Trade in Endangered Species of Wild Fauna and Flora: and other international agreements.

Summary of the Citizen Suit Provision

Under 16 U.S.C. 1540(g)(1) any person my conduct a civil suit on their own behalf to join any person including the United States and any other governmental instrumentality or agency who has been found to be potentially in violation of any provision of the statute.[137] Under 16 U.S.C. 1540(g)(1)(B), the statute also allows for citizens to compel the Secretary to apply prohibitions set forth in section 1533(d) or 1538(a)(1)(B) in relation to the taking of any resident endangered species or threatened species within any state.[138] If there is an alleged failure of the Secretary to perform any act or duty under section 1533 any person may commence a civil suit under 16 U.S.C. 1540(g)(1)(C).[139] The district court has jurisdiction under this statute and any suit brought under the subsection of this statute may be brought in the judicial district in which it occurs. (Issue occurs in California, jurisdiction is proper in ninth circuit)

Under 16 U.S.C. 1540(g)(2)(A), the individual bringing the civil suit cannot sue until 60 days after providing written notice to the Secretary.[140] The individual cannot bring suit if the Secretary has already commenced action to impose a penalty or if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a

[136] 16 U.S.C. 1531.
[137] 16 U.S.C. 1540(g)(1).
[138] 16 U.S.C. 1540(g)(1)(B); 16 U.S.C. 1533(d); 16 U.S.C. 1538(a)(1)(B).
[139] 16 U.S.C. 1540(g)(1)(C).
[140] 16 U.S.C. 1540(g)(2)(A).

State to redress a violation of the statute. The exception to the sixty-day written notice is if the party provides the reasoning for the existence of an emergency to the endangered or threatened species in the State at issue. Furthermore, an individual cannot bring a civil suit prior to sixty days after written notice providing reasons why an emergency could exist in relation to an endangered or a threatened species if the Secretary has already commenced and is diligently prosecuting action under section 1535(g)(2)(B)(ii) to determine whether any emergency exists.[141] The court may award costs of litigation to any party, whenever the court determines the award is appropriate. However, injunctive relief shall not restrict any rights under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief.

SUPREME COURT HOLDINGS

In *Bennett*, the court ruled in favor of the citizens.[142] The citizens brought suit to challenge a biological opinion that was issued by the Fish and Wildlife Service and a series of claims stating that there was a violation of § 7 of the ESA.[143] The Biological Opinion was in relation to the Klamath Project, which was a series of lakes, rivers, dams, and irrigation canals in northern California and southern Oregon.[144] The lower court originally dismissed the suit because they held that "recreational, aesthetic, and commercial interests," did not fall within the zone of interests set forth by the ESA.[145] Based on the language of the statute the Supreme Court found that the court fell within the zone of interests because breadth of the statute was broad with the inclusion of the language "any person may commence a civil suit."[146] The court reasoned that the law not only serves to advance the ESA's goal of species preservation, but also the objective to avoid needless economic cost by agency officials who zealously but pursue objectives unintelligently.[147] Based on this reasoning the court concluded that citizens had standing, alleged a sufficient injury in fact and it was traceable to the biological opinion.[148]

CIRCUIT COURT HOLDINGS

1st Circuit (Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island)

In *Seafreeze Shoreside, Inc.*[149], the court did not hold in favor of the citizens. Seabreeze Shoreside, Inc. did not have standing because the claim they made under the ESA was in relation to a biological opinion that was superseded by a plan that was later made in 2021.[150] In this case, the basis for the arguments made by the plaintiffs were in relation to a superseded plan and since

[141] 1535(g)(2)(B)(ii).
[142] 16 U.S.C. § 1540(g)(2); *Bennett v. Spear*, 520 U.S. 154 (1997).
[143] *Id*. at 157.
[144] *Id.* at 158.
[145] *Id*. at 161.
[146] *Id*. at 164.
[147] *Id*. at 176, 177.
[148] *Id.*
[149] 16 U.S.C. § 1540(g); *Seafreeze Shoreside, Inc. v. United States Dep't of the Interior*, 123 F.4th 1 (1st Cir. 2024).
[150] *Id.* at 16.

the approved plan was in 2021 plan their arguments were now moot.[151] Thus, the court held that the lower court did not err in holding that the grant of the summary judgment was proper.[152]

2nd Circuit (Connecticut, New York, Vermont)

In *Cooling Water Intake Structure Coal.*[153], the court held in favor of the EPA and not the citizens. 905 F.3d at 71. In this case, the biological opinion that the citizens were arguing violated section 7 of the ESA was a process-based approach which the biological opinion deemed to be necessary.[154] Within the Jeopardy analysis the EPA followed procedure, for the thermal impacts the EPA oversaw the technical assistance process.[155] The technical assistance process had a binding commitment by the Services for them to follow.[156] The Incidental Take Statement was committed to the technical assistance process, so there was justification for not providing an immediate take quantification.[157] Thus, the court concluded that EPA and Services did not violate section 7 of the ESA.[158]

3rd Circuit (Delaware, New Jersey, Pennsylvania, Virgin Islands)

In *Hawksbill Sea Turtle*[159], the court held that the citizens failed to satisfy the notice requirements set forth by 16 U.S.C. § 1540(g)(2)(A). The citizens in this failed to notify the appropriate Secretary specified in the ESA because the specific secretary that needs to be notified changes depending on whether the turtles are on land and at sea.[160] The citizens did notify the Secretary of the Interior, but they did not notify the Secretary of Commerce.[161] Thus, the court held that the notice requirements were not met.[162]

4th Circuit (Maryland, North Carolina, South Carolina, Virginia, West Virginia)

In *Defenders of Wildlife*[163], the court held in favor of the citizens by finding that the biological opinion set forth by IWS was arbitrary. In this case, pipeline construction was to occur which would harm various species including the Rusty Patched Bumble Bee, Club Shell, Indiana Bat, and Madison Cave Isopod.[164] After the first decision where the courts found that the 2017

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[151] *Id.*
[152] *Id.*
[153] 16 U.S.C. § 1540(g); *Cooling Water Intake Structure Coal. v. United States Env't Prot. Agency*, 905 F.3d 49 (2d Cir. 2018).
[154] *Id.* at 72.
[155] *Id.* at 72-73.
[156] *Id.* at 76.
[157] *Id.*
[158] *Id.*
[159] 16 U.S.C. § 1540(g)(2)(A); *Hawksbill Sea Turtle v. Fed. Emergency Mgmt. Agency,* 126 F.3d 461, 470 (3d Cir. 1997).
[160] *Id.* at 471.
[161] *Id.*
[162] *Id.*
[163] 16 U.S.C. § 1540(g); *Defenders of Wildlife v. United States Dep't of the Interior*, 931 F.3d 339, 366 (4th Cir. 2019).
[164] *Id.* at 342.

Biological Opinion was Arbitrary and Capricious, the FWS took only 19 days to issue another Biology Opinion and Incidental Take Statement.[165] Thus, the court concluded that the new biological opinion was still arbitrary and ruled in favor of the citizens.[166]

5th Circuit (Louisiana, Mississippi, Texas)

In *Aransas Project*[167], the court held that the lower abused their discretion in granting a preliminary injunction. In this case, the Aransas Project sued the Texas Commission on Environmental Equality under the ESA when some whooping cranes started dying because of the loss of their primary food.[168] Regardless of the fact the cranes have been endangered the TCEQ has issued permits continuously until 2010.[169] Thus, the court found that the injunction was improper because one year is not sufficient of unique events to justify an indefinite future injunction.[170]

6th Circuit (Kentucky, Michigan, Ohio, Tennessee)

To date, the 6th Circuit has not addressed a citizen suit enforcement action under the ESA.

7th Circuit (Illinois, Indiana, Wisconsin)

In *Animal Legal Defense Fund*[171] v. *Special Memories Zoo*, the court held in favor of the Zoo. In this case, Animal Legal Defense Fund sued Special Memories Zoo claiming a violation of the 16 U.S.C. section 1538 of the Endanger Species act.[172] After receiving a default judgment in their favor, the citizens moved for attorney's fees and costs under 16 U.S.C. Section 1540(g)(4).[173] The amount sought was $69,713.[174] Thus, the court found that the fees being sought were unreasonable and the lower court erred in providing this award.[175]

8th Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota)

Not sufficient case law. Most relate to attorneys' fees similar from a suit made by the Animal Legal Defense Fund, sentencing, or based on old law. Below is what was found:

In *Newton County Wildlife Ass'n v. Rogers*[176], the court did not agree with the citizens. The citizens argued that the Forest Service was arbitrary and capricious in approving the sales

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[165] *Id.* at 365.
[166] *Id.* at 366.
[167] 16 U.S.C. § 1540(g); Aransas Project v. Shaw, 775 F.3d 641 (5th Cir. 2014).
[168] *Id.*
[169] *Id.* at 664.
[170] *Id.*
[171] 16 U.S.C. § 1540(g); Animal Legal Defense Fund v. Special Memories Zoo, 42 F.4th 700 (2022).
[172] *Id.* at 701.
[173] *Id.* at 702.
[174] *Id.* at 703.
[175] *Id.*
[176] *Newton County Wildlife Ass'n v. Rogers*, 141 F.3d 803 (8th Cir. 1998).

where the forest service prepared a detailed biological evaluation for each sale and found there was no effect on any listed or endangered species.[177] The biological evaluations and the environmental impact statements considered impacts on the bald eagle and its habitat and determined the sales would have no effect. *Id.* at 810-811. Thus, the court held that the arguments made by citizens were without merit. *Id.* at 811.

9th Circuit (Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington)

In *Cascadia Wildlands*[178], the court held in favor of the citizens. In this case, marbled murrelets were at risk of having their habitat harmed because of commercial logging. Cascadia provided notice of a prospective violation of the ESA because on June 3, 2014, the state attempted to sale auction off the land following a preliminary injunction granted in 2012.[179] The letter based its reasoning on the fact that murrelets likely had a habitat in the Tract.[180] Since it was a novel issue, the court clarified the term jurisdiction in the context of the ESA as a mandatory-claims processing rule and found that the notice letter was adequate.[181] Thus, the court ruled in favor of the citizens.[182]

10th Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming)

In *Rocky Mountain*, the court held in favor of the Fish and Wildlife Service.[183] In this case, citizens sued the Fish and Wildlife Service arguing that their biological opinion was in violation of the ESA after the approval of a right of way easement for a ski resort.[184] The citizens argued that this calculation was arbitrary because it was not based on the best available science.[185] The Fish and Wildlife Service concluded that it was not possible to quantify the number of lynx susceptible to habitat loss and degradation, but the amount of lynx killed by vehicles can be quantified.[186] Thus, the court concluded that the Fish and Wildlife Service did not violate the ESA because the calculation was not arbitrary and capricious.[187]

11th Circuit (Alabama, Florida, Georgia)

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[177] *Id.* at 810.
[178] 16 U.S.C. § 1538(a)(1)(B); *Cascadia Wildlands v. Scott Timber Co.*, 105 F.4th 1144, 1148 (9th Cir. 2024).
[179] *Id.* at 1149.
[180] *Id.*
[181] *Id.* at 1153.
[182] *Id.* at 1159.
[183] 16 U.S.C. § 1540(g); *Rocky Mountain Wild v. Dallas*, 98 F.4th 1263. (10th Cir. 2024).
[184] *Id.* at 1276.
[185] *Id.* at 1303.
[186] *Id.* at 1305.
[187] *Id.*

In *Conservancy of Southwest Florida v. U.S. Fis & Wildlife Service*, the court held in favor of the Fish and Wildlife Service not the citizens.[188] In this case, citizens sued following the denial of their petition to designate the critical habitat for the Florida panther.[189] The specific issue was the fact that the Fish and Wildlife Service refused to initiate rulemaking.[190] In this instance the agency was in a better position to understand what would need to be initiated for rulemaking.[191] Thus, the court concluded that the denial of initiating rule making did not violate the ESA or the APA since the Florida Panther is a pre-1978 species and it was up to the discretion of the Fish and Wildlife Service.[192]

D.C. Circuit (District of Columbia)

In *Center for Biological Diversity,* the court held in favor of the citizens partially. EPA was in violation of the ESA because they failed to follow the necessary steps for the use of pesticides because of their failure to register pesticides.[193] The Center's mission is to protect and enjoy the environment, and the nations endangered species and habitats.[194] The EP failed to follow their duty and obligation under the original settlement and created a procedural injury as a result.[195] Thus, the court concluded that the Center had associational standing.[196] Court also granted the joint motion for some of the pesticides and dismissed others because the EPA complied with the terms of the original settlement.[197]

Federal Circuit

Not on point, mostly relates to redressability and standing there is a case that relates to the importation of salmon, but it was affirmed in part reversed in part and remanded.

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[188] *Conservancy of Southwest Florida v. U.S. Fis & Wildlife Service*, 677 F.3d 1073 (11th Cir. 2012).
[189] *Id.*
[190] *Id.*
[191] *Id.* at 1084.
[192] *Id.* at 1085.
[193] *Center for Biological Diversity v. Environmental Protection Agency*, 56 F.4th 55, 60(D.C. Cir. 2022).
[194] *Id.* at 67
[195] *Id.*
[196] *Id.*
[197] *Id.* at 77.

NATIONAL ENVIRONMENTAL PROTECTION ACT

Summary of the Law

Enacted in 1970, NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. Under NEPA, agencies evaluate the environmental and related social and economic effects of their proposed actions. The public can also comment on these evaluations.

Summary of the Citizen Suit Provision

NEPA is a procedural statute with no citizen suit provision. However, a procedural statue like NEPA mandates judicial review under the Administrative Procedures Act (APA). The citizen suit provision under the APA is 5 U.S.C. § 702. This authorizes persons who are adversely affected by federal agency action (or agency inaction) to seek judicial review of that action (or compel agency action withheld or delayed). Such actions include, for example, a "finding of no significant impact" by a federal agency under NEPA. The court may hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or (D) without observance of procedure required by law. The court shall award to the prevailing party (other than the United States) modest attorney fees and expenses unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust

SUPREME COURT HOLDINGS

In *Citizens to Preserve Overton Park*, plaintiff sued under the Department of Transportation Act of 1966 (DTA) and the Administrative Procedures Act Section 706 (APA) to halt the construction of a highway set to be built through a public park. [198] DTA prohibits the distribution of federal funds for the highway designed to go through the public park at issue until the statutory requirements have been met. [199] These requirements include showing that there were no feasible and prudent alternative routes.[200] The Secretary of the Department of Transportation did not make a formal finding showing there were no feasible and prudent

[198] *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 406, (1971).
[199] *Id.* at 407.
[200] *Id*. at 408.

alternative routes. [201] The Court held that "the generally applicable standards of [APA] § 706 require the reviewing Court to engage in a substantial inquiry" and the government's decisions at issue are entitled to a presumption of regularity.[202] However, this presumption does not shield the action from a "thorough, probing, in-depth review."[203] Part of the APA § 706 analysis requires a finding that the government did not act arbitrarily, capriciously, with an abuse of discretion, or otherwise not in accordance with law.[204] This standard of review is narrow, and the Court does not wish to substitute its judgment for that of the agency.[205] Another question to ask when an APA § 706 issue is presented is whether the government was acting with their scope of authority.[206] The government decides this issue by answering "whether on the facts the [government's] decision can reasonably be said to be within that range."[207] Lastly, the Court considered whether the government followed the necessary procedural requirements when making their determination.[208] The Court held that no formal findings were required under APA Section 706.[209] The Court specified that APA only required a formal finding during specific rulemaking and adjudication that were not applicable here.[210] The Court remanded to the District Court for plenary review.[211] Previously, the lower district court had granted summary judgment in favor of defendants.[212]

CIRCUIT COURT HOLDINGS

1st Circuit (Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island)

In *Strahan*, the First Circuit allowed Strahan to bring claims under NEPA despite the fact that it had no citizen suit provision.[213] Instead, the First Circuit allowed Strahan to bring suit under the APA, specifically 5 U.S.C. § 702.[214] In this case, plaintiff brought suit against the Coast Guard for killing two whales, and the court granted the plaintiff's motion for a preliminary injunction that directed the Coast Guard to fulfil the environmental statute requirements.[215]

2nd Circuit (Connecticut, New York, Vermont)

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[201] *Id*.
[202] *Id*. at 415.
[203] *Id*.
[204] *Id*. at 416.
[205] *Id.*
[206] *Id*.
[207] *Id*.
[208] *Id*. at 417.
[209] *Id*.
[210] *Id*.
[211] *Id*. at 420.
[212] *Id*. at 406.
[213] *Strahan v. Linnon*, 967 F. Supp 581, 615 (D. Mass.1995).
[214] *Id*. at 616.
[215] *Id*. at 632.

In *Berka*, plaintiff sued the governor of New York under NEPA for wrongly refusing to grant Indian Point Nuclear Power Plant a permit to draw cooling water from Hudson River.[216] The Court held that that NEPA does not impose obligations on state agencies or officials and dismissed the suit.[217]

3rd Circuit (Delaware, New Jersey, Pennsylvania, Virgin Islands)

In *Maiden*, the issue was whether shopping center developers had standing to bring a suit alleging that a highway project violated NEPA.[218] The court held that the developers did not have standing because the plaintiffs alleged that the highway would hurt their economic interests.[219] The court stressed that NEPA only protected physical environments, not economic interests.[220]

4th Circuit (Maryland, North Carolina, South Carolina, Virginia, West Virginia)

In *Muphly*, the plaintiff filed a complaint in court pursuant to NEPA.[221] This was a response to the government holding six public meeting as part of a scoping process for the construction of a transmission line, but none of the meetings were in plaintiff's county.[222] The court dismissed the claim because there had been no final agency action taken.[223]

5th Circuit (Louisiana, Mississippi, Texas)

In *Hurd*, plaintiff attempted to change the alignment of a federal highway.[224] To do this, plaintiff brought suit under NEPA, claiming that the highway negatively impacted plaintiff's economic interests.[225] The court dismissed the suit because NEPA only protected environmental harm, not economic harm.[226]

6th Circuit (Kentucky, Michigan, Ohio, Tennessee)

In *Livonia*, plaintiff, a neighborhood association brought suit under NEPA against the government in attempt to stop the construction of an underground sewage retention basin.[227] The

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[216] *Berka v. Cuomo*, 2021 U.S. Dist. LEXIS 57339, at * 1(N.D.N.Y 2021).

[217] *Id*. at 19.
[218] *Maiden Creek Assocs., L.P. v. United States Dep't of Transp.*, 823 F.3d 184, 187 (3rd Cir. 2016).

[219] *Id*. at 190.
[220] *Id*. at 190.
[221] *Muhly v. Espy*, 877 F. Supp. 294, 297 (W.D. Va. 1995).

[222] *Id*.
[223] *Id*. at 294.
[224] *Hurd Urban Dev. v. Fed. Highway Admin.*, 33 F.Supp. 2d 570, 572 (S.D. Tex. 1998).

[225] *Id*.
[226] *Id*. at 577.
[227] *Assoc. of Significantly Impacted Neighbors v. Livonia*, 765 F.Supp. 389, 390 (E.D. Mich. 1991).

court held that the plaintiff did not have standing to sue under NEPA.[228] The court said that to have standing for a NEPA citizen suit, "a plaintiff (1) must show 'injury in fact' as a result of the challenged action and (2) must assert an interest that is within the 'zone of interests' that the statute was intended to protect."[229] The court held that plaintiff's injury in fact was speculative because plaintiff failed to demonstrate that the interest in sought to protect was within the zone of interest protected by relevant statue.[230] The plaintiff was concerned about a decrease in potential property values, and not environmental concerns, which is what NEPA protected.[231]

7th Circuit (Illinois, Indiana, Wisconsin)

In *Frey*, the Court dismissed plaintiff's complaint. Plaintiff brought suit under CERCLA, alleging that EPA failed to perform its statutory duties when it cleans up a contamination.[232] The court held that CERCLA's citizen suit provision could not compel a federal official to perform an act required by NEPA.[233] The Court explained that if a citizen wanted to demand of an agency NEPA requirements, it could not sue under CERCLA's citizen suit provisions.[234]

8th Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota)

In *Nat'l Wildlife Fed'n,* the plaintiff sued to enjoin the defendant from developing an aquifer improvement project under NEPA.[235] The court held that defendants adequately complied with NEPA by preparing an environmental impact statement, and thus, defendants did not act arbitrarily.[236] The Court explains that NEPA does not require environmental results but instead requires a necessary process.[237] As long as the agency adequately evaluates a project's environmental impacts in an environmental impact statement, an agency complies with NEPA.[238] Plaintiff also sued under other environmental statues and successfully was awarded a preliminary injunction under the Endangered Species Act.[239]

9th Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington)

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[228] *Id*. at 391.
[229] *Id*.
[230] *Id*.
[231] *Id*.
[232] *Frey v. Thomas*, 1988 U.S. Dist. LEXIS 16967 at * 1(S.D. Ind. 1988).

[233] *Id*. at 7.
[234] *Id*.
[235]*Nat'l Wildlife Fed'n v. Harvey*, 440 F. Supp 2d 940, 945 (E.D. Ark. 2006).

[236] *Id*. at 946.
[237] *Id*. at 943.
[238] *Id*.
[239] *Id*. at 959.

In *Rattlesnake Coalition*, the plaintiff filed suit against EPA seeking relief related to the preparation of an EIS.[240] Plaintiff was concerned with the lack of an EIS related to a wastewater treatment plant upgrade funded by an EPA grant.[241] The Court found that there was lack of federal control over the project to have it be considered a major federal action under NEPA.[242] This is due to the fact that the water treatment upgrade could be financed solely with state funds, which would allow it to avoid the NEPA requirements.[243] The suit was dismissed, and the dismissal was affirmed.[244]

10th Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming)

In *Chemical Weapons Working Group*, the court barred plaintiff's claim NEPA claim because of a lapse in time.[245] Plaintiff's suit challenged the defendant's operation of a chemical disposal facility.[246] The court explained that a NEPA claim must fall within the statutory six-year limitation of 28 U.S.C. §2401, unless plaintiff can successfully demonstrate that the limitations period should be equitably tolled.[247] In this case, plaintiff attempted to toll the statute of limitations by arguing that defendant concealed information concerning the chemicals at issue.[248] The court did not find this enough to toll the statute of limitations, saying that in order for the toll to be successful, plaintiff must show that the defendants were actively deceptive which caused the filings to be untimely.[249]

11th Circuit (Alabama, Florida, Georgia)

In *Ctr. for A Sustainable Coast*, the court decided that plaintiff did have standing in a NEPA suit. Plaintiff sued the Army Corps of Engineers because the Corps had issued a dock permit without full environmental review under NEPA.[250] For a party to adequately have standing, a party needs to show injury, causation, and redressability.[251] Plaintiff had adequately established injury by showing that several of its members visited the area near the dock regularly.[252] The court further explains that for a procedural rights case (which is all NEPA cases, because they're brought under the Administrative *Procedures* Act), standards for causations and

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[240] *Rattlesnake Coalition v. Env. Protection Agency*, 509 F.3d 1095, 1098 (9th Cir. 2007).

[241] *Id*. at 1099.
[242] *Id*.
[243] *Id*.
[244] *Id*. at 1105.
[245] *Chemical Weapons Working Group, Inc. v. United States Dep't of the Army*, 2000 U.S. Dist. LEXIS 15424, at *33 (D. Utah 2000).

[246] *Id*. at 3.
[247] *Id*. at 33.
[248] *Id*. at 34.
[249] *Id*.
[250] *Ctr. for A Sustainable Coast v. U.S. Army Corps of Eng'rs*, 100 F.4th 1349, 1353 (11th Cir. 2024).

[251] *Id*.
[252] *Id*.

redressability are both relaxed.[253] Showing injury is typically enough to satisfy standing in a NEPA case.[254] The court rationalizes this by explaining that causation and redressability typically follow an injury analysis.[255] The district court had dismissed the lawsuit because of standing reasons; the Court of Appeals reversed.[256]

D.C. Circuit (District of Columbia)

In *Fla. Audubon Soc'y*, the plaintiff, an environmental group, sued the Secretary of the Treasury under NEPA for authorizing a tax credit for the use of ethyl tertiary butyl ether without preparing an Environmental Impact Statement (EIS).[257] The court held that plaintiff did not have standing to sue because they did not personally suffer an actual or threatened injury.[258] The court explained that in order to sue under NEPA, plaintiff must demonstrate that they can satisfy all constitutional standing requirements and that they have a particularized injury.[259] The court held that since plaintiffs did not demonstrate a geographic nexus to any asserted environmental injury, they did not have standing to sue.[260] The Court of Appeals affirmed the district court's granting of summary judgment in favor of the Secretary of the Treasury.[261]

Federal Circuit

To date, the Federal Circuit has not addressed a citizen suit enforcement action under the NEPA.

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[253] *Id*.
[254] *Id*.
[255] *Id*.
[256] *Id*.
[257] *Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658, 661 (D.C. Cir. 1996).
[258] *Id*.
[259] *Id*. at 665.
[260] *Id*. at 668.
[261] *Id*. at 661.

RESOURCE CONSERVATION AND RECOVERY ACT

Summary of the Law

Enacted in 1976, the Resource Conservation and Recovery Act (RCRA) is a federal environmental statute governing the treatment, storage, and disposal of solid and hazardous waste.[262] RCRA's primary aim is to prevent future environmental harm.[263] It seeks to reduce the generation of hazardous waste and ensure any waste produced is managed safely "to minimize the present and future threat to human health and the environment."[264] RCRA is largely preventative, emphasizing proper waste management to avoid creating new hazardous waste sites.[265] The U.S. Environmental Protection Agency (EPA) is responsible for RCRA's implementation and enforcement, including setting waste management standards and overseeing compliance.[266]

However, EPA may authorize individual states to administer the base hazardous waste program (Subtitle C), including permitting and compliance monitoring, provided the state program is equivalent to and consistent with the federal program.[267] Even when a state is authorized to implement RCRA, the EPA retains oversight and can still take remedial and enforcement actions.[268]

Summary of the Citizen Suit Provision:

Section 7002 of RCRA, authorizes private citizens to file civil suits to enforce the statute.[269] There are two main types of citizen suits under RCRA: (1) suits against persons alleged to be in violation of a RCRA requirement; and (2) suits to address an imminent and substantial endangerment from waste.[270] First, under §7002(a)(1)(A), any person may sue "any person (including the United States or other government agency, to the extent permitted by the Eleventh Amendment) who is alleged to be in violation of any permit, standard, regulation, condition,

[262] Resource Conservation and Recovery Act (RCRA) Overview, EPA, Sept. 05, 2025, https://www.epa.gov/rcra/resource-conservation-and-recovery-act-rcra-overview.
[263] *Id.*
[264] *Id.*
[265] *Id.*
[266] *Id.*
[267] *Id.*
[268] *Id.*
[269] 42 U.S.C. § 6972 (1976).
[270] *Id.*

requirement, prohibition, or order" under RCRA.[271] This allows private enforcement of ongoing violations. For example, if a company is currently violating RCRA regulations or the conditions of its hazardous waste permit, citizens (after proper notice) can sue to compel compliance. Second, under §7002(a)(1)(B), citizens may sue "any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the Eleventh Amendment), including any past or present generator or handler of waste, who has contributed or is contributing to the handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment."[272] This provision, often called the imminent hazard citizen suit, does not require a technical regulatory violation; instead, it targets situations where waste (even from past activities) currently poses a serious threat. In such cases, citizens can seek court orders to eliminate the danger (e.g., cleanup of contaminated soil or groundwater). A third category, §7002(a)(2), permits suits against the EPA Administrator for failure to perform a non-discretionary duty under RCRA (for instance, if EPA misses a statutory deadline to promulgate regulations).[273]

Procedural Requirements and Limits:

RCRA imposes certain procedural preconditions on citizen suits. A would-be plaintiff must give advance notice to the alleged violator, the state, and EPA at least 60 days before filing suit (90 days in the case of endangerment suits), and no suit can be commenced if EPA or the state agency is already diligently prosecuting the matter. This applies even when the EPA has delegated RCRA enforcement authority to a state, citizen suits are barred if the state is diligently prosecuting the alleged violation under an authorized program. However, if state enforcement is absent, delayed, or not sufficiently rigorous, courts have permitted citizens suits to proceed.

The Supreme Court has held that this notice-and-delay requirement is mandatory. If a plaintiff fails to strictly comply (for example, by filing too early or not notifying the right parties), the case must be dismissed. This 60-day notice period reflects Congress's intent that citizens give regulators a chance to act first; if the government begins and diligently prosecutes an enforcement action during that time, the citizen suit will generally be barred as duplicative. Even after a suit is filed, a court will dismiss or limit a citizen suit if the government is already addressing the violation or hazard through certain specified actions. This "diligent prosecution bar" ensures citizen suits supplement rather than supplant government enforcement. Finally, RCRA citizen suits cannot be used to recover monetary damages or past cleanup costs; the statute authorizes only forward-looking relief (injunctions or declaratory relief) to address ongoing violations or risks. Courts have made clear that a RCRA citizen plaintiff may seek an order requiring a responsible party to stop

[271] *Id.*
[272] 42 U.S.C. § 6972.
[273] 42 U.S.C. § 6972.

violating the law or to take action to clean up a waste posing harm, but not an award of compensatory damages for harm already done.

SUPREME COURT HOLDINGS

In *Meghrig*, the court held against the citizens under RCRA §7002(a)(1)(B). [274] In this case, KFC Western, Inc. sought to recover cleanup costs from prior property owners, the Meghrigs, under the RCRA after petroleum contamination was discovered on its property.[275] The District Court dismissed the complaint, stating that RCRA does not allow for recovery of past cleanup costs if the waste no longer poses an imminent danger.[276] The Ninth Circuit reversed this decision, but the Supreme Court ultimately reversed the Ninth Circuit, agreeing with the District Court's interpretation.[277] In this case, the Court explained that RCRA's citizen suit remedy is "to restrain" violations or "to order action" necessary to address an imminent hazard, in other words, injunctive relief only, either prohibitory or mandatory.[278] Thus, the court concluded that RCRA does not authorize private parties to recover costs for past cleanup efforts if the hazardous waste does not continue to pose an imminent threat at the time of the lawsuit.[279]

CIRCUIT COURT HOLDINGS

1st Circuit (Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island)

In *Chico Service Station*, the court held in favor of the citizens.[280] In this case, Chico Service Station filed a citizen suit under RCRA against Sol Puerto Rico Ltd., seeking cleanup of contamination from leaking underground storage tanks.[281] The district court initially dismissed the case under Burford abstention, citing Puerto Rico's interest in regulating USTs and the availability of adequate judicial review.[282] Chico argued that the local agency, EQB, had taken negligible action over 17 years, making abstention improper.[283] The Court of Appeals found that the EQB's actions did not constitute diligent prosecution and that the case was not moot.[284] Thus, the court vacated the district court's judgment, allowing the citizen suit to proceed.[285]

2nd Circuit (Connecticut, New York, Vermont)

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[274] *Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 479 (1996).
[275] *Id.*
[276] *Id.*
[277] *Id.*
[278] *Id.* at 479.
[279] *Id.* at 488.
[280] *Chico Service Station, Inc. v. Sol Puerto Rico Ltd.*, 633 F.3d 20, 23 (1st Cir. 2011).
[281] *Id.*
[282] *Id.* at 26.
[283] *Id.* at 28.
[284] *Id.* at 35.
[285] *Id.* at 37.

In *Talarico Bros. Building Corp.*, the court held partially in favor of the citizens.[286] Plaintiffs alleged that chemical plants contaminated properties with radioactive waste over decades.[287] The complaint stated that waste was recycled for construction, not discarded.[288] EPA found elevated radiation levels posing potential endangerment to health.[289] The court affirmed dismissal against Bayer, vacated and remanded for Union Carbide and Occidental.[290]

3rd Circuit (Delaware, New Jersey, Pennsylvania, Virgin Islands)

In *Interfaith Community Organization*, the court held in favor of the citizens.[291] In this case, the Interfaith Community Organization and individual plaintiffs sued Honeywell under the RCRA.[292] The complaint was about a contaminated chromium site posing imminent and substantial endangerment.[293] The District Court found Honeywell liable and ordered a cleanup through excavation.[294] Thus, the court affirmed the injunction, requiring Honeywell to remove the contaminated waste.[295]

4th Circuit (Maryland, North Carolina, South Carolina, Virginia, West Virginia)

In *Goldfarb*, the court held in favor of the citizens and ruled that the RCRA citizen suit was not precluded by the defendants' Clean Water Act permit, allowing the RCRA claims to move forward.[296] In this case, residents alleged construction activities exacerbated contamination, violating RCRA.[297] The district court dismissed the claims, but the appeals court vacated and remanded for further proceedings.[298] Thus, the court ruled that the permit did not categorically shield the defendants from RCRA liability, the overlap between the permit's requirements and RCRA's remedies needed to be examined, but was not a jurisdictional bar at the pleadings stage and the residents pled plausible RCRA claims and required further examination.[299]

5th Circuit (Louisiana, Mississippi, Texas)

In *Residents of Gordon Plaza, Inc.*, the court held against the citizens.[300] In this case, the Residents of Gordon Plaza, Inc. alleged that the site of a former landfill, now a residential area,

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[286] *Talarico Bros. Bldg. Corp. v. Union Carbide Corp.*, 73 F.4th 126, 133 (2d Cir. 2023).
[287] *Id.*
[288] *Id.*
[289] *Id.* at 134.
[290] *Id.* at 142.
[291] *Interfaith Community Organization v. Honeywell Int'l Inc.*, 399 F.3d 248, 252 (3d Cir. 2005).
[292] *Id.*
[293] *Id.*
[294] *Id.* at 253.
[295] *Id.* at 268.
[296] *Goldfarb v. Mayor & City Council of Baltimore*, 791 F.3d 500, 502 (4th Cir. 2015).
[297] *Id.* at 503.
[298] *Id.*
[299] *Id.* at 508.
[300] *Residents of Gordon Plaza, Inc. v. Cantrell*, 25 F.4th 288, 293 (5th Cir. 2022).

remained contaminated with hazardous chemicals causing health conditions.[301] The site was subject to a Superfund consent decree with the EPA, requiring the City of New Orleans to maintain the site to prevent exposure to contaminants.[302] The district court dismissed the case, finding the City was diligently conducting removal actions under the decree, which barred the citizen suit under RCRA.[303] Thus, the court affirmed the dismissal, concluding that the City complied with its obligations under the consent decree and that the citizens did not plausibly allege otherwise.[304]

6th Circuit (Kentucky, Michigan, Ohio, Tennessee)

In *Kentucky Waterways Alliance*, the court held in favor of the citizens regarding[305] The case involved environmental advocacy groups challenging Kentucky Utilities Company's storage of coal ash in man-made ponds.[306] The plaintiffs argued that this storage practice violated both the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA) because the coal ash was contaminating the surrounding groundwater, which in turn polluted a nearby lake.[307] The district court initially dismissed the RCRA claim, citing a lack of jurisdiction, as it believed the state of Kentucky was already addressing the issue through its regulatory framework.[308] However, the appellate court found that the plaintiffs had satisfied the procedural requirements for a RCRA citizen suit, including notifying the EPA and the state and alleging an imminent and substantial endangerment to health or the environment.[309] Thus, the appellate court reversed the district court's dismissal of the RCRA claim, asserting that federal courts have jurisdiction over such claims, and remanded the case for further proceedings.[310]

7th Circuit (Illinois, Indiana, Wisconsin)

In *Schmucker*, the court held against the citizens.[311] In this case, homeowners filed a lawsuit under the RCRA against Johnson Controls and Tocon Holdings, alleging that the defendants contaminated the groundwater with trichloroethylene (TCE) and failed to remediate effectively.[312] Johnson Controls had implemented measures such as connecting homes to municipal water and installing vapor mitigation systems, which were deemed effective by experts.[313] Thus, the court concluded that Johnson Controls did not violate regulatory mandates

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[301] *Id.* at 294.
[302] *Id.*
[303] *Id.* at 295.
[304] *Id.*
[305] *Kentucky Waterways Alliance v. Kentucky Utilities Co.*, 905 F.3d 925, 940 (6th Cir. 2018).
[306] *Id.* at 928-30.
[307] *Id.*
[308] *Id.*
[309] *Id.* at 939.
[310] *Id.* at 940.
[311] *Schmucker v. Johnson Controls, Inc.*, 9 F.4th 560, 565 (7th Cir. 2021).
[312] *Id.* at 562.
[313] *Id.* at 564.

and that the risk from TCE was neither imminent nor substantial, affirming the lower court's decision in favor of the defendants.[314]

8th Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota)

In *Blue Legs*, the court held in favor of the citizens.[315] The Tribe members sued the EPA, BIA, IHS, and the Tribe for violating the RCRA due to improper waste disposal on the Pine Ridge Indian Reservation.[316] The court found that the RCRA abrogated tribal sovereign immunity, and all parties were responsible for cleaning up the dump sites.[317] Thus, the court affirmed the district court's decision, holding the Tribe, BIA, and IHS jointly responsible for compliance with federal waste disposal standards.[318]

9th Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington)

In *California River Watch*, the court held against the citizens.[319] In this case, *California River Watch* alleged that the City was "transporting" solid waste in violation of RCRA because the city's drinking water supply, drawn from groundwater, contained hexavalent chromium contamination originating from an old industrial disposal site.[320] The court found that the City was not contributing to the waste transportation process as defined by the RCRA.[321] Thus, the court affirmed the summary judgment for the City, ruling that the City did not have the necessary connection to the waste disposal process to be held liable under RCRA.[322]

10th Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming)

No one-point circuit precedent. The Tenth Circuit has not recently decided a RCRA citizen suit at the appellate level. RCRA cases in this circuit tend to involve EPA regulatory actions.

11th Circuit (Alabama, Florida, Georgia)

In *Parker*, the court held in favor of the citizens.[323] In this case, property owners sued the scrap metal business for negligence, nuisance, and environmental violations, including the Clean Water Act and Resource Conservation and Recovery Act.[324] Specifically, residents living near a metal recycling facility in Georgia sued due to the facility's mishandling of waste, piles of

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[314] *Id.* at 565.
[315] *Blue Legs v. U.S. Bureau of Indian Affairs*, 867 F.2d 1094, 1095 (8th Cir. 1989).
[316] *Id.*
[317] *Id.* at 1097.
[318] *Id.* at 1095.
[319] *California River Watch v. City of Vacaville*, 39 F.4th 624, 627 (9th Cir. 2022).
[320] *Id.* at 628.
[321] *Id.* at 632.
[322] *Id.* at 634.
[323] *Parker v. Scrap Metal Processors, Inc.*, 386 F.3d 993, 1000 (11th Cir. 2004).
[324] *Id.*

automotive shredder fluff, leaking oil and battery casings, and even underground fires that were creating explosions, noxious fumes, and runoff of pollutants into a creek.[325] The Eleventh Circuit agreed that the conditions at the site posed an imminent and substantial endangerment to health and the environment, and that the company had also violated specific RCRA regulations (such as open dumping prohibitions).[326] Thus, the court affirmed a broad order requiring the operator to come into compliance with RCRA (including obtaining any necessary permits for waste storage) and to remediate the contamination on-site.[327]

D.C. Circuit (District of Columbia)

To date, the D.C. Circuit has not addressed a citizen suit enforcement action under the RCRA.

Federal Circuit

No applicable cases. The Federal Circuit does not generally hear RCRA citizen suits. RCRA §7002 actions must be brought in U.S. district courts and are appealed to the regional circuit courts. The Federal Circuit's jurisdiction is mostly patent appeals, government contract claims, takings, and claims from the Court of Federal Claims.

[325] *Id.* at 1020.
[326] *Id.* at 1014-15.
[327] *Id.* at 1020.

SAFE DRINKING WATER ACT

Summary of the Law

The Safe Drinking Water Act (SDWA), enacted in 1974 and amended in 1986, 1996, and 2018 is the primary federal law in the United States for protecting public drinking water supplies.[328] It authorizes the Environmental Protection Agency (EPA) to set national health-based standards for drinking water to safeguard against both naturally occurring and man-made contaminants.[329] The SDWA applies to all public water systems and establishes a framework for oversight that includes state and tribal participation.[330] States can apply for "primacy," allowing them to implement SDWA within their jurisdictions if their programs are at least as stringent as the federal requirements.[331]

The SDWA emphasizes multiple layers of protection for drinking water, including source water protection, treatment, distribution system integrity, and public information.[332] Water systems are required to test for specific contaminants, treat water as necessary, and report results to the appropriate authorities.[333] The 1996 amendments expanded the Act's scope to include operator certification, funding for infrastructure improvements, consumer confidence reporting, and increased public access to information.[334] The SDWA also includes requirements and provisions for the Underground Injection Control (UIC) program, which is designed to prevent contamination of "underground sources of drinking water" (USDW) from the placement of fluids underground through injection wells.[335] Under the SDWA, the UIC program regulates the construction, operation, and closure of injection wells.[336] Together, EPA, states, and local water systems collaborate under SDWA to ensure the delivery of safe, reliable drinking water across the nation.

Summary of the Citizen Suit Provision

The SDWA includes a "citizen suit" provision that allows plaintiffs to enforce the SDWA and the duties of the EPA administrator. "[A]ny person can file a civil action upon 60 days prior

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[328] Humphreys, Elena H., *Safe Drinking Water Act (SDWA): A Summary of the Act and Its Major Requirements*, Cong. Rsch. Serv., RL31243 (Jul. 1, 2021), https://www.congress.gov/crs-product/RL31243
[329] U.S. Envtl. Prot. Agency, *Understanding the Safe Drinking Water Act*, EPA-816-F-04-030 (June 2004), www.epa.gov https://www.epa.gov/sites/default/files/2015-04/documents/epa816f04030.pdf.

[330] Humphreys, *supra* note 314.

[331] Humphreys, *supra* note 314.
[332] U.S. Envtl. Prot. Agency, *supra* note 315.
[333] *Id.*
[334] Humphreys, *supra* note 314.
[335] U.S. Envtl. Prot. Agency, *supra* note 315.

[336] U.S. Envtl. Prot. Agency, *supra* note 315.

notice to EPA, the public water system, and the state for any violation of the SDWA or to force EPA to perform a required act."[337] In particular, the citizen suit provision provides:

> Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf (1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement prescribed by or under this subchapter; (2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this subchapter which is not discretionary with the Administrator; or (3) for the collection of a penalty by the United States Government (and associated costs and interest) against any Federal agency that fails, by the date that is 18 months after the effective date of a final order to pay a penalty assessed by the Administrator under section 300h-8(b)1 of this title, to pay the penalty.[338]

Importantly, to bring a citizen suit under § 300j-8(a), the plaintiff must first comply with the notice requirements and/or the diligent prosecution bar.[339] Specifically, the SDWA provides:

> No civil action may be commenced--(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this subchapter--(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator, (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or (B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or (2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator; or (3) under subsection (a)(3) prior to 60 days after the plaintiff has given notice of such action to the Attorney General and to the Federal agency.[340]

SUPREME COURT HOLDINGS

To date, the Supreme Court has not addressed a citizen suit enforcement action under the Safe Drinking Water Act.

CIRCUIT COURT HOLDINGS

The foregoing cases pertain to the drinking water programs under the SDWA. To date, no citizen suits have been filed pursuant to the Act's Underground Injection Control (UIC) program.

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[337] 42 U.S.C. § 300j-8(a).
[338] *Id.*
[339] *Id.*§ 300j-8(b).
[340] *Id.*§ 300j-8(b).

1st Circuit (Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island)

In *Rauseo*, the court held that the citizen suit provision of the Safe Drinking Water Act (SDWA) does not waive sovereign immunity unless the plaintiff can demonstrate that a clearly mandated, nondiscretionary duty has been violated.[341] In this case, the plaintiffs alleged that the property owner unlawfully discharged fill into federally protected wetlands without a permit and that the EPA and Army Corps of Engineers failed to enforce the Clean Water Act (CWA) and SDWA.[342] After sending notices to federal and state agencies, the plaintiffs brought claims under the CWA, SDWA, Administrative Procedure Act (APA), and Sunshine Act.[343]

The court dismissed the CWA and SDWA claims against the federal defendants, finding that the agencies' decisions not to enforce environmental laws are discretionary and therefore not subject to citizen suits unless a specific nondiscretionary duty is at issue.[344] Citing precedent, the court emphasized that sovereign immunity is only waived under the SDWA and CWA where there's a failure to perform a nondiscretionary duty clearly required by statute.[345] Because plaintiffs failed to identify such a duty, the court lacked subject matter jurisdiction, and the defendants' motions to dismiss were granted.[346]

2nd Circuit (Connecticut, New York, Vermont)

In *Grinnell*, the court dismissed claims brought under the Safe Drinking Water Act (SDWA) by residents of Ticonderoga, New York.[347] The plaintiffs sued the New York State Department of Health (NYDOH) and the EPA, challenging a Consent Decree that had been finalized between the United States, the State of New York, and the Town of Ticonderoga to resolve SDWA violations.[348]

The court held that the claims against NYDOH were barred by the Eleventh Amendment, finding no congressional abrogation of the state's sovereign immunity, nor any waiver of that immunity by the state through its invocation of federal jurisdiction or otherwise.[349] As for the EPA, the court found that the plaintiffs' claims were procedurally improper because they challenged past violations already addressed in the Consent Decree.[350] The proper avenue for modifying or challenging the Consent Decree, the court explained, would have been to intervene in the original enforcement action.[351]

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[341] *Rauseo v. Army Corps of Eng'rs*, 368 F. Supp. 3d 202, 207 (D. Mass. 2019).
[342] *Id.* at 205.
[343] *Id.* at 206.
[344] *Id.* at 207.
[345] *Id.*
[346] *Id.* at 210.
[347] *Grinnell v. U.S. Envtl. Protec. Agency*, 736 F. Supp. 3d 114, 128 (N.D.N.Y. 2024).
[348] *Id.* at 119.
[349] *Id.* at 126.
[350] *Id.* at 127.
[351] *Id.*

The plaintiffs concerned that decommissioning the old water system would leave them with no water or expose them to issues like corrosion and discoloration from "hard water," sought equitable relief, including annulment of the Consent Decree.[352] However, the court found that such relief was unavailable through a citizen suit under the SDWA in this context and dismissed the case with prejudice.[353]

3rd Circuit (Delaware, New Jersey, Pennsylvania, Virgin Islands)

In *Klinger*, the court held that the lead ban provision of the Safe Drinking Water Act (SDWA) applies to private plumbing systems connected to public water systems.[354] In this case, the plaintiffs contracted to purchase residential properties from the defendants and later discovered that lead solder had been used in the plumbing systems.[355] Tests revealed lead levels exceeding allowable limits under the SDWA.[356] The court found that the lead ban provision extended to private plumbing systems based on the statute's plain language, which separates public and private systems with the disjunctive "or."[357] This interpretation, the court explained, was consistent with the SDWA's overarching purpose of eliminating lead from drinking water systems.[358] The court further concluded that the violation was ongoing, as the lead continued to leach into the water supply.[359] Accordingly, the court denied the defendants' motions for summary judgment and judgment on the pleadings.[360]

4th Circuit (Maryland, North Carolina, South Carolina, Virginia, West Virginia)

In *Gaither*, the court held that summary judgment is appropriate where a plaintiff fails to comply with the Safe Drinking Water Act's (SDWA) notice requirements.[361] The plaintiff, who was incarcerated at the Federal Correctional Institution in Estill, South Carolina (FCI-Estill), alleged that the facility's water supply was contaminated and unfit for human consumption, in violation of the SDWA.[362] The court emphasized that the statute clearly requires plaintiffs to provide notice to the EPA prior to instituting a lawsuit.[363] Because the plaintiff failed to present any evidence demonstrating compliance with this notice requirement, the court recommended dismissal of the SDWA claims.[364]

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[352] *Id.* at 122.
[353] *Id.* at 128.
[354] *Klinger v. CBH Dev. Co.*, CIVIL ACTION NO. 93-0660, 1993 U.S. Dist. LEXIS 13144, at *4-5 (E.D. Pa. July 1, 1993).
[355] *Id.* at *1
[356] *Id.*
[357] *Id.* at *4-5.
[358] *Id.* at *5.
[359] *Id.* at *7.
[360] *Id.*
[361] *Gaither v. United States*, No. 5:13-cv-00108-RMG-KDW, 2013 U.S. Dist. LEXIS 187721, at *13-14 (D.S.C. Oct. 25, 2013).
[362] *Id.* at *12.
[363] *Id.* at *12-13.
[364] *Id.* at *15-16.

5th Circuit (Louisiana, Mississippi, Texas)

In *Restore*, the court held that it had subject matter jurisdiction over a citizen suit brought under the Safe Drinking Water Act (SDWA), even where the alleged violations involved a state-issued permit.[365] The court clarified that a good faith allegation of ongoing violations is sufficient to establish jurisdiction at the motion to dismiss stage.[366] In this case, the plaintiffs alleged ongoing violations of the SDWA, including failures to consistently monitor and test for contaminants, report results, and comply with maximum contaminant levels.[367] The defendant argued that the court lacked jurisdiction because the alleged violations were wholly in the past.[368] Relying on Gwaltney and subsequent case law, the court reaffirmed that jurisdiction exists where plaintiffs allege continuing violations, even under a state-issued permit.[369] Because the plaintiffs made their allegations in good faith, the court denied the defendant's motion to dismiss.[370]

6th Circuit (Kentucky, Michigan, Ohio, Tennessee)

In *Carr* the court held that the term "court of the United States" under the Safe Drinking Water Act (SDWA) refers exclusively to federal courts and therefore, a state enforcement action does not bar a citizen suit under the statute.[371] In this case, residents of a mobile home park alleged that the park's water system violated SDWA standards.[372] After providing notice of their intent to sue, the Ohio Environmental Protection Agency (EPA) filed an enforcement action in the Lucas County Court of Common Pleas, which resulted in a consent decree with the defendants.[373]

The defendants argued that the state's enforcement action barred the plaintiffs' citizen suit.[374] However, the court disagreed, reasoning that Congress has specifically included state courts in similar citizen suit provisions in other environmental statutes when it intended to do so.[375] Because it did not do so in the SDWA, the court concluded that only federal court actions can trigger the statutory bar.[376] Thus, the court denied the defendants' motion to dismiss.[377]

7th Circuit (Illinois, Indiana, Wisconsin)

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[365] *Restore v. Beauregard Water Works Dist. No.3*, No. 2:12CV2602, 2013 U.S. Dist. LEXIS 14230, at *24 (W.D. La. Jan. 30, 2013).
[366] *Id.* at *16.
[367] *Id.*
[368] *Id.* at *13.
[369] *Id.* at *24.
[370] *Id.* at *26.
[371] *Carr v. Arrowhead MHC, LLC*, 518 F. Supp. 3d 1018, 1024 (N.D. Ohio 2021).
[372] *Id.* at 1020.
[373] *Id.*
[374] *Id.* at 1022.
[375] *Id.* at 1023.
[376] *Id.* at 1024.
[377] *Id.*

In *EOR Energy LLC*, the court held that claim and issue preclusion barred a subsequent federal action brought by an oil well operator against the Illinois Environmental Protection Agency (IEPA) and the Illinois Pollution Control Board.[378] In this case, the plaintiff sought a declaratory judgment under the Safe Drinking Water Act (SDWA) and the Resource Conservation and Recovery Act (RCRA), asserting that it could inject acid into its underground wells without obtaining a hazardous waste permit.[379] The plaintiff had previously litigated the same jurisdictional argument in state court, where it contended that the IEPA and the Board lacked authority under Illinois law to regulate its acid injections into Class II wells.[380] The Illinois courts rejected that argument, and both the Illinois Supreme Court and the U.S. Supreme Court declined to review the case.[381]

Following the state court loss, EOR Energy LLC and AET Environmental, Inc. filed a federal action repeating the same claims.[382] The district court found that the issues had already been fully litigated and decided on the merits in state court and were essential to those rulings.[383] Thus, the court held that the federal action was precluded and granted the defendants' motion to dismiss for failure to state a claim.[384]

8th Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota)

In *Western Nebraska Resources Council*, the court denied the plaintiff environmental group's motion for reconsideration, holding that its action under the Safe Drinking Water Act (SDWA) was properly dismissed for lack of jurisdiction.[385] In this case, the plaintiffs alleged that the EPA and Wyoming Fuel Company failed to provide adequate public notice and a comment period in connection with the approval of an underground injection control program and failed to protect underground sources of drinking water as required by the SDWA.[386] The court concluded that a notice, comment period, and hearing did occur, and that the plaintiffs' claims were actually a challenge to the adequacy or manner of the agencies' decision-making, not a failure to perform a nondiscretionary duty.[387] Thus, the court found it lacked jurisdiction and declined to reconsider its prior dismissal.[388]

9th Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington)

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[378] *EOR Energy LLC v. Illinois Envtl. Protec. Agency*, 913 F.3d 660, 663 (7th Cir. 2019).
[379] *Id.*
[380] *Id.*
[381] *Id.*
[382] *Id.*
[383] *Id.*
[384] *Id.* at 665.
[385] *W. Neb. Res. Council v. Wyo. Fuel Co.*, 641 F. Supp. 128, 141 (D. Neb. 1986).
[386] *Id.* at 140.
[387] *Id.* at 140-41.
[388] *Id.* at 142.

In *Cal. River Watch*, the court held in favor of the plaintiffs and allowed the Safe Drinking Water Act (SDWA) claims to proceed.[389] In this case, Lodging Enterprises, which operates a hotel in Yermo, California, and California River Watch, a nonprofit organization, alleged that the district failed to ensure that drinking water supplied from its public community water system complied with the EPA's Maximum Contaminant Levels (MCLs) for gross alpha, uranium, and arsenic.[390] The defendants moved to dismiss, arguing that the plaintiffs failed to meet the SDWA's pre-suit notice requirement – because the notice was unsigned – and failed to allege an ongoing violation, asserting that a violation of an MCL standard did not equate to a requirement to take affirmative action.[391]

The court rejected both arguments, holding that the SDWA does not require the notice to be signed and that a violation of an MCL standard presumes a continuing violation until the contaminant levels fall below the applicable standard.[392] Accordingly, the court found that plaintiffs had complied with the SDWA's procedural requirements and denied the motion to dismiss.[393]

10th Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming)

In *Phan*, the court emphasized that plaintiffs bringing claims under the Safe Drinking Water Act (SDWA) must comply with the statute's mandatory notice requirements.[394] Specifically, no citizen suit may commence until sixty days after the plaintiff has provided notice of the alleged violation to (i) the Administrator, (ii) the alleged violator, and (iii) the state in which the violation occurred. The court further held that the SDWA does not authorize plaintiffs to seek monetary damages.[395]

In this case, the plaintiff alleged that the hardness of his drinking water caused him to develop kidney stones, asserting a violation of the SDWA and seeking monetary damages as well as any other "appropriate" relief.[396] Because the plaintiff failed to comply with the SDWA's notice provisions and improperly sought damages, the court ordered him to file an amended complaint within 30 days that addressed both deficiencies.[397]

11th Circuit (Alabama, Florida, Georgia)

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[389] *Cal. River Watch v. Daggett Cmty. Servs. Dist.*, No. 5:24-cv-00727-AB-DTB, 2024 U.S. Dist. LEXIS 224447, at *28 (C.D. Cal. Dec. 10, 2024).
[390] *Id.* at *17.
[391] *Id.* at *18.
[392] *Id.* at *19.
[393] *Id.* at *28.
[394] *Phan v. Aurora City Water Util. Administration*, No. 21-CV-00960-GPG, 2021 WL 5629068, at *1 (D. Colo. Apr. 13, 2021).
[395] *Id.*
[396] *Id.*
[397] *Id.*

In *Waters*, the court held that the plaintiffs' reference to violations of the Safe Drinking Water Act (SDWA) in the "Statement of Facts" section of the complaint – without asserting them as a formal cause of action – was insufficient to state a claim under the statute.[398] Moreover, even assuming the plaintiffs had properly raised such claims, the court concluded that they would still be subject to dismissal for lack of subject matter jurisdiction, as the SDWA requires an ongoing violation to confer jurisdiction, and the alleged violations were not ongoing.[399]

The plaintiffs, incarcerated individuals at the United States Penitentiary in Atlanta ("USP-Atlanta"), filed suit against the City of Atlanta and/or the Atlanta Department of Watershed, alleging that the defendants supplied water contaminated with harmful levels of arsenic from September 2018 "through and after" February 2019, in violation of the SDWA.[400] The Court interpreted the term "after February 2019" as marking the end of a defined time frame, rather than alleging a continuing violation.[401] Because the plaintiffs failed to satisfy the jurisdictional prerequisites of the statute, the court concluded that it lacked federal subject matter jurisdiction and remanded the case to a lower court for consideration of the plaintiffs' remaining non-SDWA claims.[402]

D.C. Circuit (District of Columbia)

To date, the D.C. Circuit has not addressed a citizen suit enforcement action under the Safe Drinking Water Act.

[398] Waters v. City of Atlanta, No. 1:21-CV-1830-SDG-JKL, 2021 WL 12219538, at *2 (N.D. Ga. June 29, 2021).
[399] *Id.*
[400] *Id.* at *1.
[401] *Id.* at *2.
[402] *Id.*

TOXIC SUBSTANCES AND CONTROL ACT

Summary of the Law

The Toxic Substances and Control Act (TSCA) was passed by Congress in 1967. The Environment Protection Agency (EPA) is tasked to protect the public from "unreasonable risk of injury to health or the environment" by regulating the manufacture, processing, distribution, use, sale, and disposal of chemicals. The act gave EPA the authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemicals. There are two broad categories of chemicals regulated by the act: existing and new. To note, TSCA only regulates chemicals not regulated by another federal statute.

Summary of the Citizen Suit Provision

The citizen suit provision was made to ensure that private citizens can act as enforcers of environmental laws when the EPA fails to do so. TSCA has a citizen suit provision under §20(a) that allows citizens to file a civil action against any federal agency alleged to be in violation of requirements and rules in section 4, section 5, and section 6 (TSCA subchapter II and IV) of the act. Additionally, citizens may file a civil action against an EPA administrator to perform a nondiscretionary act or duty. §20(b), excludes citizens from filing a civil action that the EPA is already prosecuting, however citizens may intervene. Additionally, citizens cannot file a citizen suit unless they provide notice to the EPA, the state in which the violation occurs, and the facility alleged to be in violation of TSCA. Further details on citizen enforcement is described in §20(a)-(d).

The sections mentioned above are summarized as follows: section 4: testing of chemical substances and mixtures, section 5: manufacturing and processing notices, section 6: regulation of hazardous chemical substances and mixtures, subchapter II: asbestos hazard emergency response; and subchapter IV: lead exposure reduction.

TSCA does not delegate chemical evaluation or restriction authority to states. States may evaluate and regulate under their own authorities, but there are limited preemptions of state requirements if EPA has evaluated the chemical and found no unreasonable risk or EPA has regulated the chemical to protect against unreasonable risk. However, TSCA generally allows preemption waivers under certain circumstances. The 2016 Lautenberg Chemical Safety Act (LCSA) preemption provisions were expanded under Section 18: temporary preemption (18(b)) during EPA's risk evaluation, and permanent preemption (18(a)), which is after EPA issues regulations or findings for a chemical.

States have the authority to enforce chemical regulations in place before April 22, 2016, adopt new actions under laws in effect before August 31, 2003, enact rules under other federal environmental laws, and implement reporting or disclosure requirements not required by TSCA. Additionally, states may enforce requirements identical to TSCA; however, penalties cannot exceed TSCA's penalty maximums, states cannot penalize if EPA has done so for the same

violation, and if both state and federal penalize, the combined penalty cannot exceed TSCA's cap.

Under §2627, TSCA authorizes EPA to award grants to states to address unreasonable risk associated with a chemical that the agency is unable or not likely to address. These grants are to complement, not reduce EPA's authority under TSCA. Grants can cover up to 75% of program costs, and the EPA has discretion over the amount. Additionally, under §4852, states are required to have authorized programs to qualify for grants related to lead-based paint hazard reduction. Lastly, §63.1067 allows for delegation of implementation and enforcement authority to state, local, or tribal agencies for certain subparts of the regulation.

SUPREME COURT HOLDINGS

There are no Supreme Court cases that directly address the Toxic Substance and Control Act citizen suit provision. However, since TSCA citizen suit provision is like those found in other environmental statutes, the Supreme Court highlights the role of private citizens in enforcing environmental laws, procedural requirements for initiating such suits, and limitations under the provision to ensure that citizen suits supplement governmental enforcement, rather than undermine it.

CIRCUIT COURT HOLDINGS

1st Circuit– (Maine, Massachusetts, New Hampshire, and Rhode Island)

In *Belivea*, the court held that §2622(b)(2)(A) of TSCA required the Secretary's review of the settlement agreement.[403] In this case, an environmental program manager for the U.S. Navy reported environmental violations to the EPA.[404] After alleged retaliation, the petitioner filed a complaint but withdrew it as part of a settlement agreement.[405] The petitioner later claimed that the Navy violated the agreement and continued to retaliate, and that the settlement agreement is void because The Secretary of Labor failed to review or approve it.[406] The petitioner asked to reopen the case for lack of review.[407] The Court reasoned that the plain language of the environmental statutes required review of agreements settling claims of discriminatory retaliation.[408]

2nd Circuit– (Connecticut, New York, and Vermont)

[403] *Beliveau v. United States DOL*, 170 F.3d 83, 84 (1st Cir. 1999).
[404] *Id.*
[405] *Id.*
[406] *Id* at 85.
[407] *Id.*
[408] *Id* at 84.

In *Labor Council for Latin Am. Advancement*, the court upheld the EPA's implementation of a retailer distribution ban on methylene chloride under §2605.[409] The Court determined that it was a reasonable way to mitigate risk associated with consumer use.[410] Additionally, the Court held that the claims regarding the regulation of commercial use was unripe for judicial review.[411] The Court reasoned that intervention could hinder the EPA's ongoing evaluation of the issue and would not necessarily reduce harm.[412] Additionally, the petitioners had not shown they would suffer significant harm from delay.[413] This case was about reviewing a Final Rule of the U.S. for smaller quantities and EPA's lack of consideration to States EPA.[414]

In *Physicians Comm. for Responsible Med. V. Johnson*, the court affirmed the district court's grant of summary judgment to the EPA administrator.[415] In this case, an organization wanted the EPA to issue a rule for mandatory testing of high production volume chemicals under §2603(a).[416] The Court reasoned that the EPA did not make the necessary actual findings to trigger a nondiscretionary rulemaking duty and there was no alternative to challenge the agency's actions as a regulator.[417]

In *NRDC, Inc.,* the court granted review of and vacated the exemption codified at 40 C.F.R. § 713.7(b)(2) and denied review of the exemptions codified at 40 C.F.R. § 713.7(b)(2) and 713.9(a).**[418]**. In this case, the Natural Resources Defense Council, Inc. and the state of Vermont, challenged three exemptions in the EPA's Mercury Reporting Rule under the TCSA.[419] Three exemptions were challenged: (a) for importers of assembled products with mercury-added components, (b) for domestic manufacturers of assembled products with mercury-added components, and (c) for high-volume manufacturers of mercury.[420] The court reasoned, "exemption for manufacturers of products with mercury-added components and the exemption for high-volume manufacturers are lawful in light of Congress's directive to 'not require reporting which is unnecessary or duplicative.'"[421]

In *N.Y.C. Hous. Auth.*, the court denied the government's motion for approval and ordered both parties to submit a joint status report by December 14, 2018, detailing how they wished to proceed. [422] In *N.Y.C. Hous. Auth.*, The United States of America sued the New York Housing

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[409] *Labor Council for Latin Am. Advancement v. United States EPA*, 12 F.4th 234, 238 (2d Cir. 2021).
[410] *Id.* at 239.
[411] *Id.*
[412] *Id.* at 238.
[413] *Id.*
[414] *Id.*
[415] *Physicians Comm. for Responsible Med. v. Johnson*, 436 F.3d 326, 327 (2d Cir. 2006).
[416] *Id.*
[417] *Id.*
[418] *NRDC, Inc. v. United States EPA*, 961 F.3d 160, 165 (2d Cir. 2020)

[419] *Id.* at 164.
[420] *Id.*
[421] *Id.* at 165 *(*citing 15 U.S.C. § 2607(a)(5)(A)).
[422] *United States v. N.Y.C. Hous. Auth.*, 347 F. Supp. 3d 182, 217 (S.D.N.Y. 2018

Authority under the TSCA to correct the NYCHA's compliance with federal lead-based paint regulations.[423] The court reasoned that the Proposed Consent Decree by the parties "is not fair and reasonable, and because its entry would disservice to the public interest, the Government's motion for approval is denied."[424]

3rd Circuit– (Delaware, New Jersey, and Pennsylvania.)

In *Cudjoe v. Dep't of Veterans Affairs*, the court held that there was no express waiver of sovereign immunity allowing private citizens to sue the Department of Veterans Affairs directly under 42 U.S.C.S. §4852d.[425] In this case, the lawsuit arose from the defendant's failure to disclose lead-paint contamination in a leased apartment.[426] The court reasoned that neither the plain language, the statutory structure, or the relevant agency interpretations supported waiver of sovereign immunity.[427]

In *Dow Chem. Co.*, the court held that the change should be considered by congress and denied review of the matter. [428] In *Dow Chem. Co.*, the case originated because Dow Chemical Company challenged the Environmental Protection Agency's interpretation of Section 8(d) of the TSCA, which required manufacturers, processors, and distributors of chemicals to submit health and safety studies.[429] The court reasoned that its role was confined to interpreting the statute to give effect to the legislation.[430] It further found that the way the statute was drafted did not justify going against the clear congressional choice when drafting the statute.[431]

4th Circuit– (Maryland, North Carolina, South Carolina, Virginia, and West Virginia)

In *Ctr. For Env't Health*, the court granted EPA's motion to dismiss for lack of jurisdiction.[432] In this case, the court addressed a citizen petition under Section 21, requesting testing on 54 PFAS chemicals.[433] The EPA granted their petition; however, plaintiffs were dissatisfied when they learned that the EPA did not plan to test all 54 individually or implement all their proposed tests.[434] The court determined that Section 21 of TSCA only allows judicial review of a petition denial or failure to act.[435] Therefore, since EPA granted their petition, the court lacked jurisdiction.

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[423] *Id.* at 189.
[424] *Id.* at 217.
[425] *Cudjoe v. Dep't of Veterans Affairs*, 426 F.3d 241, 243 (3d Cir. 2005).
[426] *Id.*
[427] *Id.*
[428] *Dow Chem. Co. v. United States Envtl. Prot. Agency*, 605 F.2d 673, 690 (3d Cir. 1979).
[429] *Id.* at 675.
[430] *Id.*
[431] *Id.*
[432] *Ctr. for Env't Health v. Regan*, 666 F. Supp. 3d 509, 528 (E.D.N.C. 2023).
[433] *Id.* at 512.
[434] *Id.*
[435] *Id.* at 514.

5th Circuit– (Louisiana, Mississippi, and Texas)

In *OXY USA v. Babbitt*, the court concluded that the citizen suit provision did not replace the Administrative Procedure Act's requirements.[436] The court reasoned that reading the statute and history, there was not a clear or intentional manifestation to provide a mechanism by which the plaintiffs could by-pass well established procedures for administrative and judicial review.[437]

6th Circuit– (Kentucky, Michigan, Ohio, and Tennessee)

In *Lockett v. United States*, the court affirmed the dismissal of the case and held that the EPA's actions fell within the discretionary function exception to the Federal Tort Claims Act (FTCA), because the agency has discretion in determining it response to the contamination under TSCA regulations.[438] In this case, plaintiffs alleged negligence by the EPA under FTCA for failing to warn and prevent or decrease the risk of continued exposure regarding a PCB-contaminated site.[439]

In *Brewer v. Ravan*, the Court held the TSCA citizen suit provision does not authorize private plaintiffs to seek civil penalties.[440] In this case, the plaintiffs alleged that Emhart and Duracell have not complied with the PCB disposal regulations, and because of the defendant's action, the Waynesboro Plant posed an unreasonable risk of serious injury to the public or environment.[441] The Court concluded that neither the express language nor legislative history of TSCA suggest that civil penalties are available to private plaintiffs in suits brought pursuant to section 2619(a)(1).[442]

7th Circuit– (Illinois, Indiana, and Wisconsin)

In *Liebhart v. SPX Corp*, the court held that the owners were not required to show that contaminants on their property exceeded a specific concentration, if the original material met the criteria under TSCA.[443] In this case, the plaintiffs alleged that dust and debris containing toxic chemicals migrated on their properties, contaminating their yards and jeopardizing their health.[444] The court reasoned, the plain text under §2619(a), regulation requires no showing that the contaminants were concentrated above fifty ppm, if the original material met the criteria.[445]

In *Citizens for Better Env't*, the court held that "that 15 U.S.C. § 2620 in a proper case permits a federal court to require that the EPA initiate rulemaking procedures and is

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[436] *OXY USA v. Babbitt*, 122 F.3d 251 (5th Cir. 1997).
[437] *Id.* at 259.
[438] *Lockett v. United States*, 938 F.2d 630, 631(6th Cir. 1991).
[439] *Id.*
[440] *Brewer v. Ravan*, 680 F. Supp. 1176, 1183 (M.D. Tenn. 1988).
[441] *Id.*
[442] *Id.*
[443] *Liebhart v. SPX Corp.*, 917 F.3d 952, 954 (7th Cir. 2019).
[444] *Id.*
[445] *Id.* at 961-62.

constitutional."[446] Citizens for a Better Environment filed a petition requesting the EPA to enforce the TSCA against steel producers in Southeast Chicago who produced coke oven emissions that yielded toxicological effects.[447] The EPA denied the petition, and the CBE sought de novo review in the district court.[448] The court reasoned that the court may require the executive to initiate rulemaking upon judicial findings.[449]

In *Anderson*, the court held that the TSCA did not provide an independent basis for jurisdiction and remanded the case to the state court. [450] In *Anderson*, Illinois, citizens filed a class action lawsuit alleging that the defendant released hazardous substances in Sauget, Illinois.[451] The court reasoned that it does not have jurisdiction over the matter pursuant to "28 U.S.C. § 1442, and because it must decline to exercise its jurisdiction under the Class Action Fairness Act (CAFA)".[452]

8th Circuit– (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota)

To date, the 8th Circuit has not addressed a citizen suit enforcement action under the TSCA.

9th Circuit– (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington)

In *Am. Unites for Kids v. Rousseau*, the court held that the district court abused its discretion in imposing sanctions (not awarding attorney fees) based on testing activities conducted before the lawsuit was filed.[453] Additionally, the court held that the school district's plan to demolish the pre-1979 building rather than remediate them was a more effective way to reduce exposure to PCBs.[454] In this case, two environmental organizations sued administrators and board members of the Santa Monica Malibu Unified School District, seeking remediation of school building containing PCBs.[455] The court reasoned there was insufficient grounds for concluding that the plaintiff's testing activities before the initiation of the action were done in bad faith.[456]

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[446] *Citizens for Better Env't v. Thomas*, 704 F. Supp. 149, 152 (N.D. Ill. 1989).
[447] *Id.* at 150.
[448] *Id.*
[449] *Id.* at 152.
[450] *Anderson v. Hackett*, 646 F. Supp. 2d 1041, 1055 (S.D. Ill. 2009).
[451] *Id.* at 1044.
[452] *Id.* at 1055.
[453] *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1081 (9th Cir. 2021).
[454] *Id.*
[455] *Id.*
[456] *Id.*

In *Abuan*, the court affirmed the grant of summary judgment by the lower court against the appellants, who were a class of people accidentally exposed to toxic chemicals.[457] In *Albuan*, a class action of individuals involved in the cleanup of toxic chemicals filed a lawsuit against General Electric Company.[458] The court reasoned that the "plaintiffs failed to introduce sufficient evidence of exposure to demonstrate the requisite proximate."[459]

10th Circuit– (Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming)

In *Roe v. Wert*, the court discussed the legislative background of environmental statutes and the role of citizen suit provisions.[460] The court notes the importance of citizen suit provisions, as it empowers citizens to address environmental hazards and enforce compliance.[461]

11th Circuit– (Alabama, Florida, Georgia)

To date, the 11th Circuit has not addressed a citizen suit enforcement action under the TSCA.

D.C. Circuit (District of Columbia)

In *Environmental Defense Fund v. Reilly*, the court held that the appellants, having utilized Section 21 of TSCA, cannot resort to any remedy under the Administrative Procedure Act (APA).[462] In this case, appellants initially used both Section 21 of TSCA and the APA to try to achieve the same goal.[463] However, the Court ruled against them on their APA based claims and the appellants continued to pursue their clams under TSCA. After exhausting all remedies under TSCA, appellants sought to go back and use APA again.[464] The Court reasoned that nothing in the language, structure, or legislative history of TSCA indicate that appellants can exhaust all remedies for their substantive claims to relief and then strive to better their remedies using APA again.[465]

In *EDF*, the court granted review for the American Chemistry Council (ACC) and denied review for the Environmental Defense Fund (EDF).[466] EDF challenged the rule's definitions, CBI review process, and permissive language, while ACC argued it unlawfully allowed disclosure of confidential chemical identities through downstream reporting.[467] The court reasoned that the EDF's petition should be denied because EPA's rule was lawful and

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[457] *Abuan v. Gen. Elec. Co.*, 3 F.3d 329, 335 (9th Cir. 1993).
[458] *Id.* at 331.
[459] *Id.*
[460] *Roe v. Wert*, 706 F. Supp. 788, 791 (W.D. Okla. 1989).
[461] *Id.*
[462] *Envtl. Def. Fund v. Reilly*, 285 U.S. App. D.C. 316, 909 F.2d 1497, 1497 (1990).
[463] *Id.*
[464] *Id.*
[465] *Id.*
[466] *EDF v. United States EPA*, 124 F.4th 1, 19(D.C. Cir. 2024).
[467] *Id.* at 5.

reasonable, but granted ACC's petition on the basis the rule unlawfully allowed unauthorized disclosure of confidential information through downstream reporting, vacating it to that extent.[468]

In *3M Co.*, the court held that the case was to be remanded for further proceedings.[469] Between August 1980 and July 1986, 3M unknowingly violated the TSCA by importing two new chemicals without Premanufacture Notices (PMNs) in Chemical A—imported from a Canadian affiliate while brokers incorrectly certified TSCA compliance to Customs—and Chemical B—mistakenly assumed to match a listed substance but later found to be new.[470] After 3M self-reported the violations in July and September 1986, the EPA filed an administrative complaint in September 1988 seeking $1.3 million in civil penalties.[471] The court reasoned that the five-year statute of limitations for the matter had expired and thus left no remedy for civil penalties to be levied on the petitioner where the statute of limitations had tolled before the onset of the case.[472]

In *Chem. Mfrs. Ass'n*, the court denied the petition for review of the matter, centered on the TSCA and the judicial review of the test rules.[473] In *Chem. Mfrs. Ass'n*, the Chemical Manufacturers Association (CMA), and four chemical manufacturing companies sought judicial review of a Final Test Rule overseen by the EPA under §4 of the TSCA.[474] The court reasoned that the judicial review of test rules under TSCA requires substantial evidence in the review of the record when reviewed in totality.[475]

Federal Circuit

In *Bowling*, the court concluded that although TSCA citizen suit provision allows civil suits in U.S. District Courts, it does not provide a federal claim for personal injury.[476] In this case, federal employees claimed personal injuries due to negligence related to asbestos exposure in the workplace.[477]

In *Ayres v. United States*, the court held that TSCA's citizen suit provision under 15 U.S.C. §2619 permits private actions for injunctive relief but does not mandate compensation for damages.[478]

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[468] *Id.* at 19.
[469] *3M Co. v. Browner*, 305 U.S. App. D.C. 100, 17 F.3d 1453, 1463 (1994).
[470] *Id.* at 1455.
[471] *Id.* at 1456.
[472] *Id.* at 1463.
[473] *Chem. Mfrs. Ass'n v. U.S. EPA*, 859 F.2d 977, 995 (D.C. Cir. 1988).
[474] *Id.* at 979.
[475] *Id.* at 994.
[476] *Bowling v. United States*, 93 Fed. Cl. 551, 559 (2010).
[477] *Id.* at 554-55.
[478] *Ayres v. United States*, 66 Fed. Cl. 551, 561 (2005).

Index