

As EPA Backs Down, Expect Enviros To Step Up Citizen Suits

By **Madeleine Boyer, Bina Reddy and Michael Vitris** (February 12, 2025)

We expect newly confirmed U.S. Environmental Protection Agency Administrator Lee Zeldin to quickly follow through on President Donald Trump's promises to draw down federal enforcement efforts, particularly in the arena of air emissions.

While this reprieve may feel like welcome news to some, companies should keep in mind that most federal environmental statutes — e.g., the Clean Water Act, the Clean Air Act and the Resource Conservation and Recovery Act — empower citizens to act as private attorneys general to bring enforcement actions for regulatory violations, and in some cases, order a defendant to abate an endangerment to human health or the environment.

Typically, large, sophisticated and well-organized environmental nongovernmental organizations, file these citizen suits, not individual citizens. Complex citizen suits can be litigated for years, and are often far more onerous than agency enforcement actions.

For example, in *Environment Texas Citizen Lobby Inc. v. ExxonMobil Corp.*, the U.S. Court of Appeals for the Fifth Circuit affirmed a \$14.25 million penalty against the oil giant in December 2024, 14 years after the Sierra Club and Environment Texas filed a CAA citizen suit.

There is good incentive for such groups to bring a citizen suit. If successful, a plaintiffs group can secure injunctive relief, attorney fees, penalties and supplemental environmental projects that can directly fund local groups.

Even when legally tenuous, citizen suits ignite media interest, allowing environmental NGOs to solicit donations and encumber their targets for years, regardless of the litigation outcome.

Environmental NGOs Promise to Fill Any EPA Enforcement Gap

It is all but guaranteed that environmental groups will soon step into the enforcement void and file citizen suits. We saw this during the first Trump administration when EPA inspections, penalties and enforcement actions waned.

Agency staff cuts are a strong predictor of decreased enforcement action. According to reports, more than 1,000 EPA staff have already been told they may be immediately fired.[1]



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Environmental groups are preserving data that has been removed from government websites, including which communities are disproportionately burdened by industry impacts from climate change, legacy pollution, and polluted air, water and wastewater.[2]

Environmental NGOs Are Better Organized, Funded and Staffed Than Ever Before

Without an EPA receptive to their advocacy, environmental groups will turn to citizen suits to drive enforcement. Environmental NGO growth is driven by donors seeking to support litigation to oppose Trump's efforts.

And now, with the federal government supporting programs to encourage voluntary attrition, EPA lawyers, scientists and policy experts may — and, in fact, are being invited to — join the ranks of environmental NGOs.

These groups are better funded and better staffed than ever — effectively functioning as the largest plaintiff-side environmental firms in the country. Bringing this into sharper focus, here are the breakdowns for just a few leading citizen suit plaintiffs based on publicly available information:

- Earthjustice: 200 attorneys; 15 offices in the US; spent \$81.8 million on litigation expenses in fiscal year 2023.
- Environmental Defense Fund: 1,000 full-time staff; \$387.8 million in assets.
- Natural Resources Defense Council: 40 litigation attorneys; \$594 million in assets.
- Sierra Club: 39 attorneys; \$199.3 million in assets.
- Center for Biological Diversity: 63 lawyers; \$43 million in assets.
- National Environmental Law Center: Four attorneys; has secured over \$350 million in citizen suit relief.

Based on information we examined from these groups' websites and financial statements, and cases from LexisNexis analytics, the combined numbers for just these groups — which excludes energized local groups that align with national environmental NGOs — paints the potential for formidable near-term industry opposition:

- Over 500 attorneys working across the country;
- Over \$1.5 billion in assets to fight with;
- At least 873 active cases; and
- At least 12 million members spread across every jurisdiction.

Environmental NGO Targets

Environmental groups have widely criticized the early actions of the new administration, and have vowed to launch aggressive campaigns to defend President Joe Biden's priorities regarding climate change and environmental justice.

Based on their press releases and announcements, we expect environmental groups to focus on the following issues:

- Climate change, with a focus on methane emissions;
- PFAS;
- Air toxics such as benzene and ethylene oxide;
- Biodiversity and endangered species;
- Plastics; and
- Blocking new and expanded petrochemical plants through permit and procedural challenges.

Environmental justice concerns will likely drive the geography of these lawsuits. In his first week in office, Trump eliminated the Biden administration's Justice40 initiative that required 40% of the benefits from certain environmental programs go to environmentally overburdened communities.

In addition, the Trump administration ordered all environmental justice departments and positions to be terminated within 60 days.[3]

Citizens groups have pledged to reverse the impact of these orders by focusing on environmental justice communities, many of which are in Texas and Louisiana.

Environmental Integrity Project has mapped petrochemical facilities discharging chemicals to waterways, noting that 58 of 70 plants had permit violations. The overwhelming majority are on the Gulf Coast.

Bracing for Citizen Suits

The best defense against a citizen suit is always compliance. Companies should focus on compliance efforts, such as self-auditing and resolving enforcement actions.

Facilities should know their data and where they have reported noncompliance, e.g., through Title V deviation reports, discharge monitoring reports, Toxics Release Inventory information, etc. Citizen groups use this publicly available information to develop notices of intent, which are required to be sent to a company prior to filing a citizen suit.

Companies should stay savvy about emerging analytical tools and monitoring methods — e.g., drones, ambient monitors, handheld sampling devices. Track requests under the Freedom of Information Act and its state analogues regarding company facilities, and consider submitting requests for one's own information.

Companies in receipt of a citizen suit notice of intent must be prepared to act quickly due to the short 60-day — or in some cases, 90-day — window before a complaint can be filed.

Finally, the importance of good relations with neighbors also cannot be overstated. National environmental NGOs cannot effectively bring a case without local support, which often arises from a community's perception that they have no other recourse.

Companies can take various steps to promote good relations. Offer listening and information sessions periodically and in response to incidents. Create outlets for receiving complaints directly and resolve them whenever feasible. Foster a culture of decision-making that considers external impacts.

The return on these measures may be unseen, but the cost of disinterest beyond one's fenceline could be existential.

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[1] Tracy J. Wholf, CBS News, More than 1,100 EPA employees warned of immediate termination, <https://www.cbsnews.com/news/epa-employees-warned-of-immediate-termination/>.

[2] Climate and Economic Justice Screening Tool, <https://edgi-govdata-archiving.github.io/j40-cejst-2/en/#3/33.47/-97.5>; see also Miranda Willson, E&E News, Groups archive environmental justice data scrapped by Trump (Jan. 23, 2025).

[3] Charles Ezell, U.S. Office of Personnel Management, Mem. Re: Guidance Regarding RIFs of DEIA Offices (Jan. 24, 2025).