



# Environmental Civil Litigation:

*Procedures, Priorities and Results*

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# **USEPA's National Enforcement Initiatives 2011-2013**

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- **Discharges of raw sewage and contaminated stormwater**
- **Concentrated animal feeding operation ("CAFO") waste**
- **Widespread Air Pollution from Largest Sources**
  - Coal-fired utilities
  - Cement manufacturing sector
  - Glass manufacturing sector
  - Sulfuric and nitric acid manufacturing sector

# USEPA's National Enforcement Initiatives 2011-2013

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- **Air Pollution affecting Community Health**
- **Mining and Mineral Processing Operations**
  - Pollution reduction - hazardous waste
- **Energy Extraction Sector Environmental Compliance**
  - Air
  - Water
  - Land

# Approaches to Civil Environmental Claims

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- **Enforcement by Regulatory Authorities**
- **Private Party Litigation**
- **Use of Class Action**
- **Use of Non-Environmental Laws**
- **Citizen Suits**

# Types of Citizen Suits

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- **Two basic types of "citizen suits" authorized under US federal law:**
  - Mandatory Duty Suits
  - Citizen Enforcement Actions
- **Other related statutory rights of citizens:**
  - Petitions for Review of Agency Actions
  - Petitions for Objections to Title V Permits
  - Citizen suits under state law (not all states)

# Mandatory Duty Suits

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- **Potential for affecting EPA's rulemaking agenda through mandatory duty suits**
- **EPA actions under court-mandated deadlines:**
  - NAAQS
  - NSPS
  - MACT

# Dramatic Increase in Citizen Enforcement Suits

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- **Increased access to compliance information**
  - Self-reporting mechanisms
  - Technological advancements
- **Enhanced coordination**
  - Coordinated strategies around certain issues: coal-fired power generation, emissions events
- **Litigation barriers reduced**
  - Legal organizations partnering with grass roots groups.
  - Threshold resources have been reduced
  - Stable of experts developed for litigation purposes

# Recent Citizen Suit Trends

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- **Common plaintiffs**
- **Common claims:**
  - Federal Clean Air Act and Clean Water Act
  - Emissions violations and emissions events
  - Legacy permits and permit representations
- **Common demands:**
  - Emissions reductions and controls
  - Enhanced monitoring
  - Civil penalties
  - Funding for environmental projects
  - Attorneys fees



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