

# Citizen Suits – A Primer



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# Enforcement Overview



- Governmental enforcement
- The role of citizen suits
- Other (Public Nuisance, etc.)



# The Major Environmental Statutes Allow Citizen Suits



- Clean Air Act (CAA)
- Clean Water Act (CWA)
- Resources Conservation and Recovery Act (RCRA)
- Safe Drinking Water Act (SDWA)
- Endangered Species Act (ESA)
- Toxic Substances Control Act (TSCA)
- Emergency Planning and Community Right to Know Act (EPCRA)

# Citizen suits come in all shapes and sizes



Examples from a *quick* review

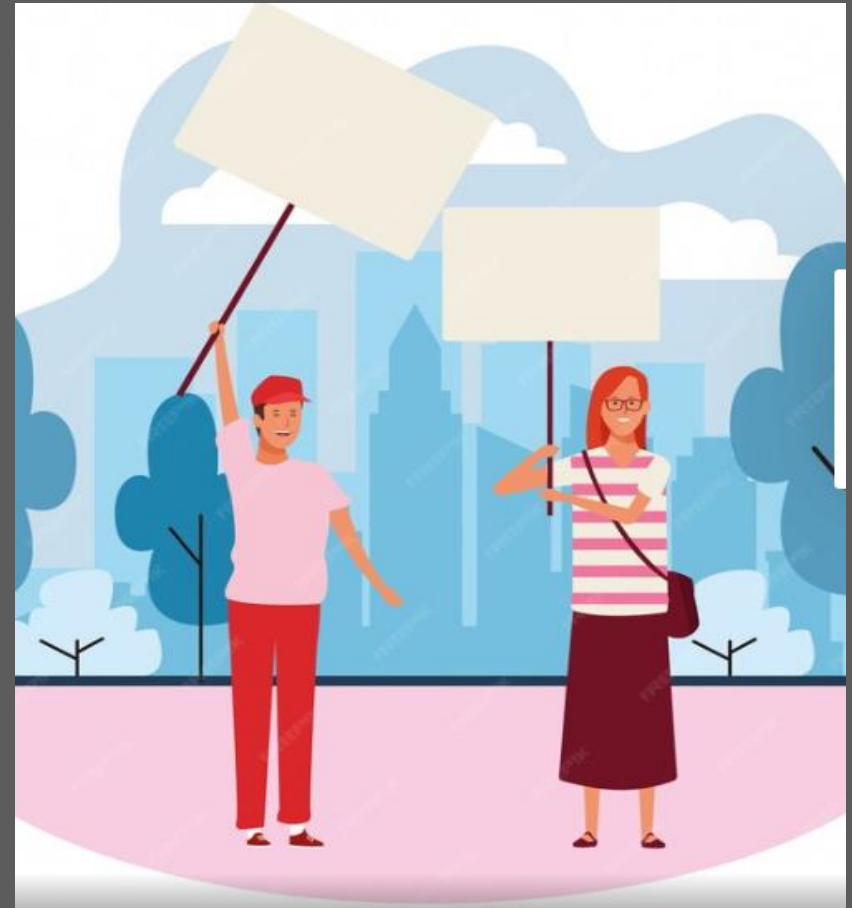
- Copper smelter
- Refinery (air emissions)
- Nitrogen dioxide standards
- Airplane de-icing
- Power plant (opacity issue)
- PFAS
- Poultry farm



# Citizen suits come in all shapes and sizes -- continued



- Air toxics standards
- Particulate matter
- Mining issues
- Magnesium plant
- Climate change
- Light rail development
- Highway expansion
- These are just a few examples!



# Citizen suits – the basics



- Notice of alleged violation (intent to sue)
- Waiting period
- Has agency commenced and diligently prosecuting the issue (Government is primary!)
- Standing



# Change of Perspective (Attitude Adjustment!)



- The agency may be your new best friend
- Try to embrace its work



# One Example (If Time To Discuss): *Citizen Contentions Against Developer X*



Because building through a wetlands, permit should not have been issued:

- Wasn't proper notice of the EA/Finding of No Significant Impact
- There should first be an Environmental Impact Statement
- Corps didn't pick the LEDPA (Least Environmentally Damaging Practicable Alternative)

Translation:

- We want to give more input
- There should be more environmental studies
- Corps is letting Developer X build in the wrong Corridor

# How are these issues decided?



- Was proper process followed – including enough opportunity for notice and comment
- Did the Corps take a “hard look” at the issues



# Remember: In litigation, you want to tell a story



“Plaintiff \_\_\_\_\_ seeks to have the Court delay a valuable roadway project and send home construction workers and engineers on the Developer X Project despite years of planning, extensive and repeated opportunities for public participation, and a nearly two year review by the Corps. Such an injunction would subject Developer X – and thus the \_\_\_\_\_ County taxpayers – to substantial costs in construction delay penalties and other unbudgeted expenses. It will harm hundreds of skilled workers and their families in the \_\_\_\_\_ County community by preventing them from receiving paychecks for work this summer relating to the Project.”

# Developer X Telling Its Story



- **Developer X's Role in the Community**
- **Project Historical Development, Planning and Community Support**
- **Developer X's Extensive Community Outreach**
  - “Overall, the Developer conducted in excess of 190 public meetings and hearings on this project over a period of 8 years.”

# Developer Telling Its Story



- **The Project is Needed Now**
- **The Project Provides Important Benefits to the Community**
  - Connectivity (transportation benefits)
  - Environmental benefits
  - Safety
  - Benefits in the event of flooding (unique benefits)

**Developer X will be severely impacted if the Project were halted (remember: the court will balance!)**

# QUESTIONS



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