Federal Environmental Statutory Citizen Suits: U.S. Environmental Protection Agency Proposed Rule Addressing Notice Requirements



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

02/25/2026

The United States Environmental Protection Agency ("EPA") published a proposed rule in the February 24th Federal Register addressing notification requirements for federal environmental statutory citizen suits. See 91 Fed. Reg. 8810.

EPA is proposing to amend its regulations prescribing the manner in which prior notice of citizen suits is to be provided as required under various federal environmental statutes.

The following federal environmental statutes which have citizen suit provisions are addressed by the proposed rule:

- Clean Air Act.
- Clean Water Act.
- Safe Drinking Water Act.
- Noise Control Act.
- Resource Conservation and Recovery Act.
- Comprehensive Environmental Response, Compensation, and Liability Act.
- Toxic Substances Control Act.

These federal environmental statutes generally authorize private parties to act as "private attorney generals" in certain circumstances against those who violate the applicable regulations. Such authorities are typically denominated citizen suit provisions. Specifically, such citizen suit provisions authorize "any person" to file an action against "any person" alleged to be in violation of the applicable statute or regulation.

Certain procedural prerequisites (federal/state agency to diligently prosecute, standing, etc.) must be in place for such a citizen suit to be prosecuted. One such requirement is that the citizen notify the alleged violator and the federal and state agencies before filing the action. EPA is proposing to modify the method of notification for the referenced federal environmental statutes.

The proposed rule will generally require electronic service to the EPA of Notices of Intent ("NOIs") to file a citizen suit under the referenced environmental statutes. EPA further notes by way of background in the preamble:

... The existing regulations that prescribe the manner in which NOIs must be served upon the EPA require service by mail. The proposed amendments to the rules would require electronic service to the

Administrator, as well as the relevant Regional Administrator, if applicable, via the procedure identified at www.epa.gov/ogc.

Nevertheless, EPA states that for situations where electronic service is impractical, the proposed rule would allow service of NOIs to be accomplished via certified mail accompanied by an explanation as to why electronic service is impracticable.

A copy of the Federal Register notice can be found here.