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# Federal Environmental Statutory Citizen Suits: Ecological Rights Foundation Comments on U.S. EPA Proposed Rule Addressing Notice Requirements

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The Ecological Rights Foundation (“ERF”) submitted February 26th comments on the United States Environmental Protection Agency (“EPA”) proposed rule addressing notification requirements for federal environmental statutory citizen suits. See 91 Fed. Reg. 8810.

ERF describes itself as a:

... non-profit public interest organization dedicated to protecting water quality, public health, and environmental resources through education, community engagement, and citizen suit enforcement actions under the federal environmental laws including the Clean Water Act (“CWA”) and Resource Conservation and Recovery Act (“RCRA”).

ERF states that it is commenting on the rule because it regularly prepares and serves citizen suit notices. The organization states that the proposed rule directly affects the efficiency and effectiveness of citizen suit enforcement.

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

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

- 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.

EPA’s proposed rule would generally require electronic service to the agency of Notice of Intent to file a citizen suit under the referenced environmental statutes.

Key points contained in the EFR comments include:

- Modernization of Notice Letter Service Requirements Is Appropriate and Necessary.
- Electronic Service Advances the Purpose of Citizen Suit Notice Provisions.
- The Proposed Rule Reduces Costs and Administrative Burdens with Regard to Service on Certain Entities.
- Electronic Service Improves Reliability and Reduces Procedural Disputes.
- Support for the Practicability Exception.
- Implementation Recommendation.
- A simple and publicly accessible electronic submission portal;
- Automatic confirmation receipts documenting submission and receipt; and
- Prompt posting of submitted notice letters to EPA's public-facing repository to promote transparency.

Substantive changes suggested for the proposed rule include:

- Replace requirements for service of citizen suit notice letters by Registered Mail with service by Certified Mail.
- Calculate the start of the citizen suit notice period by the date of mailing or, in the alternative, remove the requirement to request and procure return receipt cards to prove receipt of citizen suit notice letters.
- Streamline service by allowing for service of citizen suit notice letters by online portal where state or federal agencies have created such portals.
- Remove requirements to serve redundant citizen suit notice letter recipients.

A copy of the ERF comments can be found [here](#).