

## The Citizens Are Coming: Citizens Groups Are Better Funded Than Ever and Will Take Over Where Biden Left Off

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We expect newly-confirmed U.S. Environmental Protection Agency (EPA) Administrator Lee Zeldin to quickly follow through on President 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 (CWA), Clean Air Act (CAA), and Resource Conservation and Recovery Act (RCRA) 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 non-governmental organizations (eNGOs) 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 December 2024, the U.S. Court of Appeals for the Fifth Circuit affirmed a \$14.25 million penalty against Exxon Mobil fourteen years after 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 plaintiff's group can secure penalties (and supplemental environmental projects that can directly fund local groups), injunctive relief, and attorneys' fees. Even when legally tenuous, citizen suits ignite media interest, allowing eNGOs to solicit donations and encumber their targets for years, regardless of the litigation outcome.

## eNGOs 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.<sup>1</sup> 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, air, water and wastewater.<sup>2</sup>

## eNGOs 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. eNGO growth is driven by donors seeking to support litigation to oppose President 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 eNGOs.

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; in FY2023 spent \$81.8 million on litigation expenses.
- Environmental Defense Fund: 1,000 full-time staff (attorneys unknown); \$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; 8 offices; \$43 million in assets.
- National Environmental Law Center: 4 attorneys; has secured over \$350 million in citizen suit relief.

The combined numbers for just these groups—which excludes energized local groups that align with national eNGOs—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.
- At least 12 million members spread across every jurisdiction.

## eNGO Targets

Environmental groups have widely criticized the early actions of the new administration and have vowed to launch aggressive campaigns to defend the President's Biden 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, President 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.<sup>3</sup>

Citizens groups have pledged to reverse the impact of these orders by focusing on environmental justice communities. Many of these communities are in Texas and Louisiana. Environmental Integrity Project has

mapped petrochemical facilities discharging chemicals to waterways (see below), noting that 58 of 70 plants had permit violations. The overwhelming majority are on the Gulf Coast.



Source: EIP\_Report\_PlasticsToxicRiver\_11.14.24-2.pdf

## 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, TRI inventories, etc. Citizen groups use this publicly available information to develop Notices of Intent (NOI), 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 FOIA and its state analogues regarding company facilities and consider submitting requests for one's own information. Companies in receipt of a citizen suit NOI must be prepared to act quickly due to the short sixty-day (or in some cases ninety-day) window before a complaint can be filed.

Finally, the importance of good relations with neighbors also cannot be overstated. National eNGOs 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.

*B&D's citizen suit practice brings decades of experience litigating these cases against eNGOs. We offer one of the most experienced citizen suit defense teams, including the former Assistant Attorney General for the Environment and Natural Resources Division of the U.S. Department of Justice (DOJ) and former DOJ attorneys responsible for oversight of citizen suit settlements. B&D knows the eNGO playbook and how to most effectively defeat it. We excel in cases that pose novel theories of liability and stand ready to assist companies who find themselves in the crosshairs of these challenges.*

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<sup>1</sup> 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).

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