

## CHAPTER 2

# Why Enforcement Is Going To Be Such a "Big Deal" under the Clean Air Act Amendments of 1990

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Synopsis

**§ 2.01. Introduction.**

**§ 2.02. Overview of the Clean Air Act's Enforcement Provisions.**

[1]--The Pre-1990 Clean Air Act.

[2]--Overview of Changes in Enforcement Mechanisms Made by the  
1990 Clean Air Act Amendments.

**§ 2.03. Administrative Penalty Scheme.**

[1]--In General.

[2]--Administrative Penalties (§ 113(d)(1) & (2)).

[3]--Field Citation Program (§ 113(d)(3)).

[4]--Appeals of Administrative Penalties (§ 113(d)(4)).

[5]--Failure to Pay a Fine (§ 113(d)(5)).

**§ 2.04. Civil Enforcement.**

[1]--Civil Judicial Enforcement.

[2]--Inspections, Monitoring, and Entry (§ 114(a)(1)).

[3]--Penalty Assessment Criteria (§§ 113 and 304(a)).

[4]--Other Civil Enforcement Provisions.

[a]--Federally Assumed Enforcement (§ 113(a)(2)).

[b]--Compliance Orders (§ 113(a)(4)).

**[c]--Preventing New Source Construction (§ 113(a)(5)).**

**[d]--Emergency Powers (§ 303(a)).**

**[e]--Administrative Enforcement Subpoenas (§ 307(a)).**

**[f]--Government Contracts (§ 306(a)).**

## **§ 2.05. Criminal Enforcement.**

**[1]--In General (§ 113(c)).**

**[2]--Prohibited Conduct.**

**[a]--Violation of Emission Restrictions.**

**[b]--False Statements.**

**[c]--Failure to Pay Fees.**

**[d]--Knowing Endangerment.**

**[e]--Negligent Endangerment.**

**[i]--Problems Caused by Injecting the Concept of Negligence  
into a Criminal Statute.**

**[ii]--Constitutional Notice Issues.**

**[3]--Fines under The Criminal Fine Enforcement Act and the Federal  
Sentencing Guidelines; Prison Terms under the Guidelines.**

**[a]--Individual Defendants.**

**[i]--Fines.**

**[ii]--Imprisonment.**

**[b]--Organizational Defendants.**

**[i]--Fines.**

**[ii]--Other Factors for Corporations to Consider.**

**[4]--Criminal Enforcement Trends.**

## **§ 2.06. Citizen Involvement.**

**[1]--Citizen Suits (§§ 304 & 307).**

**[a]--Civil Penalty Awards.**

**[b]--Past Violations.**

**[c]--Effect of Citizen Suits on the United States.**

[d]--In Which District Court to File Citizen Suits?

[e]--Suits for Deferred Performance.

[f]--Effect of Petitions for Reconsideration.

[2]--Public Involvement in Settlements (§ 113(g)).

[3]--Bounty System (§ 113(f)).

§ 2.07. Conclusions.

## § 2.01. Introduction.

The world of environmental enforcement is changing. The federal government has dramatically increased the number of environmental enforcement cases that it has brought and now has the resources to increase its enforcement efforts even more.<sup>(2)</sup> Enforcement of Clean Air Act<sup>(3)</sup> (CAA) requirements will increase, not only because additional money is available to prosecutors and investigators, but also because many of the programs established by the 1990 Clean Air Act Amendments<sup>(4)</sup> make it much easier for the government (and public interest groups) to bring Air Act enforcement actions.

The following is a summary of Clean Air Act enforcement requirements under the pre-1990 Act, followed by a brief overview of the changes wrought by the 1990 Amendments to the Act. The remainder of this Chapter describes the new Air Act enforcement requirements in greater detail and offers some recommendations to companies wanting to reduce the number and impact of Clean Air Act enforcement actions.

Keep in mind while reviewing these new requirements that they will affect, not only those who own and operate sources subject to Clean Air Act requirements, but also those who provide fuels for Clean Air Act sources. For example, EPA and the states are setting increasingly more precise SO<sub>2</sub> emission limitations for individual sources, and then trying to enforce those limitations with data from continuous emission monitors rather than data from periodic stack tests or periodic fuel sampling. This is going to force source owners to take all steps possible to ensure that their sources burn only compliance fuels to meet SO<sub>2</sub> emission limitations continuously.

Coal suppliers, in particular, can expect the new Clean Air Act enforcement requirements to make their fuel users far more fussy about sulfur content. In new contract negotiations or through force majeure clauses in existing contracts, coal users are going to be insisting that all coal delivered meet fuel sulfur specifications. Purchasers, at the very least, may require ASTM procedures be used to test the sulfur content of all coal shipped from the mines. Where feasible, they may insist on more at-the-mine coal sampling and blending to ensure a consistent sulfur content in all the coal shipped to them. This is all because it is becoming increasingly more likely that burning noncomplying fuels will be discovered by the states and EPA and those discoveries will result in source owners having to pay increasingly larger penalties.

## § 2.02. Overview of the Clean Air Act's Enforcement

### Provisions.

[1]--The Pre-1990 Clean Air Act.

The provisions primarily used by EPA in enforcing the pre-1990 Clean Air Act were Sections 113,<sup>(5)</sup>