

## Chapter 2

# The Perfect Storm: EPA Pressure and Citizen Suits in the Mining Industry

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**§ 2.01. Introduction.**

The topic of selenium discharges in the mining industry has been gaining attention over the past decade from state and federal regulators, as well as from environmental groups. On the regulatory front, selenium serves as a prime example of the ongoing tug-of-war between state and federal agencies over the supposedly “cooperative” system of setting water pollution limits. Meanwhile, environmental groups have seized the opportunity created by this uncertain regulatory environment to advance their agenda through litigation. These groups are attempting to use citizen suits as a vehicle to fundamentally expand the reach of the Clean Water Act in the mining industry. Tension is compounded when citizen suits are superimposed on regulatory agencies’ attempts to enforce selenium limits through the administrative process. A “perfect storm” is brewing over selenium issues in the mining industry as a growing body of scientific evidence points to the toxic effects of excess selenium on aquatic life, while the industry struggles to develop cost-effective methods of preventing or treating selenium in mine site discharges. Resolving these issues in the courts, at the agency level, and in the field will be critical to the future growth of the mining industry.

**§ 2.02. Brief Introduction to Citizen Suits Under the Clean Water Act.**

The Clean Water Act provides a mechanism for citizens<sup>1</sup> to enforce violations of its provisions. Subject to certain limitations discussed below,

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<sup>1</sup> The Act defines “citizen” for purposes of the citizen suit provisions as “a person or