

Chapter 6

The Role of Citizen Suits in the Shale Revolution

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§ 6.01. Purpose.

Many federal health, environmental, and safety statutes contain citizen suit provisions that allow a person to bring a civil action in federal court to ensure compliance with applicable statutory and regulatory requirements. Some of these provisions also allow citizens to sue regulators who fail to comply with mandatory statutory obligations. But in most cases a citizen suit can only proceed if certain procedural requirements are met; *e.g.*, the citizen plaintiff must provide prior notice of the violation to the alleged violator and to the agency responsible for enforcing the statute or regulation. In addition, a citizen suit usually cannot proceed if the agency or another law enforcement authority has begun and diligently is pursuing an administrative or judicial proceeding for the violation.

The rapid expansion of energy infrastructure to transport oil and gas from the nation’s shale plays and proposed reductions in the federal funding for administrative agencies could make the filing of citizen suits more likely in the coming years. This chapter focuses on the substantive and procedural requirements that apply in these cases, particularly in the context of the regulation of the oil and gas industry. It begins by providing an overview of the history of citizen suit provisions and then discusses many of the issues that typically arise in citizen suit litigation. It concludes by providing a more in-depth analysis of the three statutes that contain the citizen suit provisions that are most likely to affect the oil and gas industry: the Pipeline Safety Act, the Clean Air Act, and the Clean Water Act.