

## Chapter 4

# Citizen “Suit Yourself”: New (and Very Real) Water Compliance Challenges for Coal Power Utilities

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**§ 4.01. Introduction.**

Compliance with federal, state, and even local environmental government enforcement initiatives is only the beginning of the story for coal power utilities. Citizen lawsuits to enforce environmental laws impose new and daunting compliance challenges. While citizen lawsuits have long existed, environmental non-governmental organizations (ENGOS) are beginning to utilize them with increasing frequency, often taking innovative approaches to expand their reach. Coal power utilities need to consider compliance not just from an agency perspective, but also with an eye toward deflecting, defending, or minimizing the likelihood of citizen lawsuits. This chapter addresses the rise in citizen suit enforcement and identifies several overarching citizen group initiatives and litigation battlegrounds, with a focus on coal power utility and water compliance. Finally, the chapter outlines several preemptive strategies that coal power utilities can use to defend against citizen enforcement actions.

**§ 4.02. Background.**

Citizen enforcement has not always been an aspect of modern environmental statutes. When Congress was initially passing environmental legislation in the 1960s, most statutes did not include a citizen suit provision. However, in the 1970s, Congress became concerned that federal agencies such as the United States Environmental Protection Agency (EPA) were not sufficiently motivated to enforce environmental statutes. Starting with the Clean Air Act (CAA), Congress added a provision giving the public the opportunity to bring lawsuits under the statute.<sup>1</sup> In short order, Congress added similar provisions to nearly every environmental statute.<sup>2</sup>

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<sup>1</sup> 42 U.S.C. § 7604(a)(1).

<sup>2</sup> See, e.g., Clean Water Act (CWA), 33 U.S.C. § 1365 (providing that “any citizen” may sue under the Clean Water Act); Toxic Substances Control Act (TSCA), 15 U.S.C.