



## *Environmental Citizens Suits*

Charles M. Denton

*A Primer on Citizen Suits Under Federal Environmental Statutes:  
How to Bring; How to Defend; When are Attorneys' Fees Awarded?*

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## **“Private Attorney General” Claims**

- Environmental Enforcement Priorities of NGOs (e.g., Industry Sector, Media, Geographic Region, Program, etc.)
- Enforcement Target Risk Reduction Strategies



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## “Private Attorney General” Claims, cont.

- Pre-Suit “Notice of Intent to Sue”
  - Response by agency (*e.g.*, diligent prosecution, collaboration/resource coordination, etc.)
  - Response by PRP
    - Defenses/denial
    - Agency settlement approach
    - Settlement with NGO Plaintiff group
    - Silence
  - Insurance coverage?



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## “Private Attorney General” Claims, cont.

- Anticipation of Litigation Work-Product
  - Experts
  - Compliance Self-Audit
  - Public Relations
- Complaint & Court Proceedings
  - Discovery Strategy (*e.g.*, Rule 30(b)(6) deposition)
  - Bifurcation
  - ADR



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## “Private Attorney General” Claims, cont.

- Settlement negotiations
  - Fines/penalties
  - Attorneys’ fees and costs
  - Supplemental Environmental Project (SEP)
  - Judicial approval
  - Notice to Agency



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## EPA Rulemaking Challenges

- Public Comments
- Pre-Promulgation Suit
- Final Rulemaking Appeal
  - Individual and/or trade association petitioner
  - Intervenors
  - Consolidation
- “Sue and Settle” Strategy
- Judicial Deference to Agency (*Chevron*)



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# QUESTIONS?



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