



**Background paper for the
"Seminar on Strengthening the Enforcement and
Administration of Environmental law in North America."
PANEL 1.- How legal arguments are formed in environmental
enforcement cases.
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In the United States, enforcement of environmental laws is designed to deter those who may profit from violating the law and level the playing field for environmentally compliant companies. Enforcement is based on statutes and regulations which seek to correct non-compliance, recuperate profits earned by illegal activities, impose penalties and/or jail time, and redress actual damage done. Individuals, companies – including owners and operators of facilities – municipalities, and other political subdivisions may be prosecuted for alleged violations of environmental law.

Enforcement by the federal government of environmental laws and standards may be administrative, civil, or criminal. Administrative cases tend to be the least serious offenses and are handled directly by the Environmental Protection Agency (EPA). Civil judicial cases are pursued in federal courts by the Department of Justice on behalf of EPA. Criminal cases are pursued by the criminal divisions of the Department of Justice or EPA against the most serious environmental violations as well as those which involve egregious negligence or conduct involving intentional, willful or knowing disregard of the law.

Many U.S. laws authorize both civil and criminal enforcement for the same illegal conduct. However, parallel civil and criminal cases for the same offenses may weaken one or both cases. Thus, the Department of Justice and EPA have established policies to deal with such circumstances. Generally, criminal prosecutions are resolved before the commencement of a civil action. By allowing the criminal case to go forward first, the agencies reflect the severity of the case forcing the violators to face the stiffest sentences first. However, if imminent and substantial endangerment may result from the illegal activities, corrective actions or other civil proceedings for injunctive relief may proceed first in order to abate danger or further damage to the public health or the environment.

Federal enforcement authorities often work side-by-side with State authorities. Federal environmental statutes recognize the importance of allowing states to have primary responsibility to implement and enforce federal environmental programs. Thus, states can apply for, and receive, authorization to administer most environmental programs. Most states have approval to implement and enforce at least a portion of the U.S. environmental laws. The EPA and the authorized states work together to ensure effective enforcement by coordinating their efforts in the areas of compliance monitoring, inspections and enforcement actions. Depending on the state legislation, state enforcers may be able to impose administrative penalty orders for violations, and bring judicial actions for civil, and sometimes criminal, penalties in state courts.



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Lastly, in the United States many federal environmental laws give private citizens, including groups or organizations, the right to go to court and seek to enforce those laws against violators. Depending on the law, citizens may seek penalties (payable to the U.S. Treasury), injunctive relief, and attorney's fees and costs. When a citizen sues a private violator, and the case concludes through a settlement (not a formal judicial determination), the terms of the settlement are not binding on the federal government. The government may still bring its own enforcement action for the same violation.