

As the Bush Administration learned, it can be difficult to pass new legislation or enact new regulations. But another way of gutting environmental rules is much easier: just stop enforcing them. An agency's enforcement decisions receive essentially no judicial review and precious little publicity. Cuts in enforcement budgets receive even less public notice and are completely unreviewable, though they require congressional action. It's no wonder that criminal cases against violators of environmental laws [decreased](#) 30% after Bush took office, and civil enforcement went down even more. We can expect to see the same thing happen again under Trump, probably even more so. Indeed, a recent [report](#) shows that enforcement is already down sharply compared with previous administrations.

Federal pollution laws have some unusual features. One is the role of the states in implementing federal regulations. States aren't compelled to do so, but they have the option of taking over implementation and enforcement of many environmental requirements. EPA is supposed to supervise them to ensure they are doing so effectively. In practice, it is difficult under the best of circumstances for EPA to ride herd on the states. As a result, as I discuss in a recent [paper](#), there have been big disparities between states, depending on how much they care about environmental quality.

Given Pruitt's express desire to give states more leeway in implementing environmental rules, the situation will only get worse. States that choose to do so will continue to engage in serious enforcement. But others will give up the right

Obama's EPA was considering new approaches to enforcement, taking advantage of new technologies for monitoring and data analysis in order to maintain enforcement levels despite increasingly stringent budgets. The odds that Pruitt will pursue these efforts are slim to none.

Fortunately, the federal pollution laws contain a fallback when state and federal government enforcement falters. One of the distinctive features of U.S. environmental law is the use of citizen suits for enforcement purposes. Available remedies include an injunction against noncompliance, an order requiring the defendant to pay civil penalties to the government, and attorneys' fees. These citizen suit provisions allow any person who can demonstrate harm to commence an action against a violator. With the exception of the federal pesticide law, all of the major environmental statutes authorize citizen suits, including those regulating air pollution, water pollution, waste sites, endangered species, and toxic substances.

There are some limits on citizen suits that sometimes prove troublesome. The statutes require plaintiffs to give notice, usually 60 days, to the alleged violator and to federal and

state authorities prior to filing suit. Most of the statutes specify that if federal or state authorities are diligently prosecuting compliance actions, citizen suits are barred, though citizens are authorized to intervene in federal enforcement actions. Polluters and state governments sometimes try to game these rules. But these are probably less important constraints than budgetary limits. Environmental groups simply don't have kinds of resources that a government has to pursue enforcement. Thus, they are only a partial substitute, but at least they can maintain enforcement efforts in targeted cases, even when state and federal governments default. During the Bush Administration, there was a sharp increase in the number of citizen suits, and we can expect to see that happening again.

Thus, the situation isn't as dire as it could be. But this is one area where the Trump Administration's efforts to torpedo environmental protection will be difficult to combat. At least, non-enforcement is a problem that can be corrected later with a new Administration.