Arizona State University 2022 SRP Sustainability Conference of American Legal Educators

Call for Individual Presentation Proposals

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Title: *Environmental Enforcement*

Submitted Via: Conference Website

Abstract: By multiple accounts, environmental compliance is lacking in the United States. The U.S. Environmental Protection Agency (EPA) has reported that in 2018, over 29 percent of facilities that had National Pollutant Discharge Elimination System permits under the Clean Water Act were in significant noncompliance with their permits.[[1]](#footnote-1) A 2020 report by the Natural Resource Defense Council revealed that nearly 40 percent of the U.S. population (largely in environmental justice areas) obtains their water from drinking water systems that are in violation of the Safe Drinking Water Act.[[2]](#footnote-2) A 2020 letter by the EPA to several state environmental agency representatives, raised concerns over widespread tampering of vehicle emission control systems in the United States in violation of the Clean Air Act. This presentation will present legal academic research on legal hurdles that limit the ability of environmental enforcers to deal with environmental noncompliance.[[3]](#footnote-3) It will discuss legal hurdles that arise in case proceedings across three stages of environmental enforcement, detecting, proving, and remedying violations. In all three stages, environmental enforcers (federal and state agencies, and citizen groups) grapple with a wide range of legal hurdles including information gathering authority, the preemption and preclusion doctrines, regulatory exceptions, evidentiary standards, and appropriations law. The point of the presentation will be to highlight enforcement as a cross-cutting topic of concern that impacts all areas of environmental law.

1. Memorandum from Susan Parker Bodine, Assistant Administrator, Off. of Enf’t & Compliance Assurance, EPA, to Regional Administrators (June 7, 2019), https://www.epa.gov/sites/production/files/2019-06/documents/2020-2023ncimemo.pdf [↑](#footnote-ref-1)
2. NRDC, *Watered Down Justice*, 2020, available at <https://www.nrdc.org/sites/default/files/watered-down-justice-report.pdf>, page 5. [↑](#footnote-ref-2)
3. The author has published three recent articles on the topic of environmental enforcement: https://papers.ssrn.com/sol3/cf\_dev/AbsByAuth.cfm?per\_id=908130 [↑](#footnote-ref-3)