

state, and any agency, department or instrumentality of the United States and any officer, agent or employee thereof. The principal basis for such a suit would most likely be an assertion that the state implementation plan relaxation would cause a violation of existing ambient air quality standards for the region in which the source is located.

Another basis for action is the "citizen's suit" provision in Section 304 of the Clean Air Act (42 U.S.C. 7604) which authorizes private parties to commence actions against polluting sources to enjoin violations of any provision of a federally approved state implementation plan, or any order issued under the Act by EPA or a state. Thus, if a source were emitting in excess of the limitation prescribed in the approved state implementation plan, a private party could commence an action against that source to enforce compliance. Any such suit must be preceded by 60 days advance notice to EPA and the state in which the violation is occurring of the intention to commence a lawsuit under Section 304.

In using Section 304 as a basis for suit, the plaintiff need not prove injury to the environment or himself; he need only establish that the source is operating in violation of the state implementation plan or an EPA or state-issued order. Although costs of litigation may be recovered (including attorney's and expert witness' fees), under a Section 304 proceeding no damages are available. However, there is nothing which would preclude the joinder of a nuisance claim with an action based upon Section 304. It should be noted that any remedy granted under Section 304 would not require a source to achieve emission limitations any stricter than those already contained in the state implementation plan; thus, if a source obtained a relaxation, it could not be compelled to achieve more stringent emission limitations as a result of a suit under Section 304.

Standing. Whether a Canadian citizen would have standing under either Section 304 or 307 of the Act is not entirely clear. The question has not been litigated and cannot be answered with any degree of certainty. A private Canadian citizen may be a "person" within the meaning of Section 302 of the Act; however, the definitional section is narrowly drawn, and in light of Section 115, Section 302 could very well be interpreted not to include standing for foreign citizens within its scope. It is virtually impossible to read Section 302 to include a Canadian governmental entity.