

Chapter 17–Environmental Laws and Pollution Controls

Concern over the degradation of the environment has increased over time in response to the environmental effects of population growth, urbanization, and industrialization. Environmental protection is not without a price. For many businesses, the costs of complying with environmental regulations are high, and for some they are too high.

Environmental law–

Common Law Actions

Common law remedies against environmental pollution originated centuries ago in England. Those responsible for operations that created dirt, smoke, noxious odors, noise, or toxic substances were sometimes held liable under theories of negligence or nuisance.

Nuisance

Nuisance–

Courts have often denied injunctive relief on the ground that the hardship imposed on the polluter and on the community are greater than the hardships to be suffered by the plaintiff.

A property owner may be given relief from pollution in situations in which he or she can identify a distinct harm separate from that affecting the general public. This harm is referred to as private nuisance. A public authority can sue to abate a public nuisance.

Negligence and Strict Liability

The basis for a negligence action is business' failure to use reasonable care toward a party whose injury was foreseeable.

Businesses that engage in ultrahazardous activities such as the transportation of radioactive wastes are strictly liable for whatever injuries the activities cause.

Federal Regulation

Environmental Regulatory Agencies

The most well known of the agencies regulating environmental law is the Environmental Protection Agency. Other federal agencies with authority for regulating specific environmental matters include the Department of Defense, Department of the Interior, Department of Labor, the FDA, and the Nuclear Regulatory Commission.

Assessment of the Impact of Agency Actions on the Environment

The National Environmental Policy Act (NEPA) of 1969 requires that for every major federal action that significantly affects the quality of the environment, an environmental impact statement must be prepared.

Environmental impact statement–

An action qualifies as major if it involves a substantial commitment of resources. Construction by a private developer of a ski resort on federal land, for example, may require an EIS.

An EIS must analyze:

Other federal laws also require that environmental values be considered in agency decisions. Among these laws are the Fish and Wildlife Coordination Act of 1958 and the Endangered Species Act of 1973.

Air Pollution

In 1963, the federal government passed the Clean Air Act, which focused on multistate air pollution. This law and its amendments provide the basis for issuing regulations to control pollution coming primarily from mobile sources.

Mobile Sources

The 1970 amendments to the Clean Air Act required a reduction of 90 percent in the amount of carbon monoxide and other pollutants emitted by automobiles by 1975. This was met by the mid-1980s.

Under the 1990 amendments to the law, automakers must cut new autos' emissions of nitrogen oxide by 60 percent and emission of other pollutants by 33 percent.

In light of evidence that very small particles of soot affect our health as significantly as larger particles, the EPA issued new particulate standards for motor vehicle exhaust systems and other sources of pollution. The EPA also decreased the acceptable standard for ozone.

Stationary Sources

The Clean Air Act authorizes the EPA to establish air-quality standards for stationary sources but recognizes that the primary responsibility for preventing and controlling air pollution rests with state and local governments. Different standards apply to sources of pollution in clean areas and sources in polluted areas.

Industrial emissions of 189 hazardous air pollutants must be reduced by 90 percent by 2000. By 2002, the production of chlorofluorocarbons, carbon tetrachloride, and methyl chloroform must stop.

Hazardous Air Pollutants

Hazardous air pollutants are emitted from stationary sources by a variety of business activities, including smelting, dry cleaning, house painting and commercial baking.

In recent years, the EPA has become increasingly concerned with the hazardous air pollutants emitted by landfills. In 1996, the EPA issued a new rule to regulate these emissions.

Violations of the Clean Air Act

Private citizens can sue violators. For violations of emission limits, the EPA can assess civil penalties of up to \$25,000 per day.

Water Pollution

Federal regulations governing the pollution of water can be traced back to the Rivers and Harbors Appropriations Act of 1899. These regulations prohibited ships and manufacturers from discharging or depositing refuse in navigable waterways.

Navigable Waterways

navigable waterways–

The Clean Water Act prohibits the filling or dredging of wetlands unless a permit is obtained from the Army Corps of Engineers.

Wetlands–

Drinking Water

Another statute governing water pollution is the Safe Drinking Water Act. Passed in 1974, this law requires the EPA to set maximum levels for pollutants in public water systems. Operators of public water systems must come as close as possible to meeting the EPA's standards by using the best available technology that is economically and technologically feasible. The EPA is concerned with contamination from underground sources such as landfills and underground injection wells.

Ocean Dumping

The Marine Protection, Research, and Sanctuaries Act of 1972 regulates the transportation and dumping of material into ocean waters. The law prohibits the dumping of radiological, chemical, and biological warfare agents and high-level radioactive waste. There are specific exemptions—materials subject to the permit provisions of other pollution legislation, wastes from structures regulated by other laws, sewage, and other wastes.

Oil Pollution

In response to the Exxon Valdez oil spill, Congress passed the Oil Pollution Act of 1990. Any onshore or offshore oil facility, oil shipper, vessel owner, or vessel operator that discharges oil into navigable waterways or onto an adjoining shore may be liable for clean-up costs, as well as damages.

Toxic Chemicals

The first toxic chemical problem to receive widespread public attention was that posed by pesticides and herbicides. The federal statute regulating pesticides and herbicides is the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 (FIFRA).

Under 1996 amendments to the Federal Food, Drug, and Cosmetic Act, for a pesticide to remain on the market, there must be a "reasonable certainty of no harm" to people from exposure to the pesticide. It is a violation of FIFRA to sell a pesticide or herbicide that is unregistered, a pesticide or herbicide with a registration that has been

anceled or suspended, or a pesticide or herbicide with a false or misleading label.

The first comprehensive law covering toxic substances was the Toxic Substances Control Act of 1976.

In 1976, Congress passed the Resource Conservation and Recovery Act (RCRA) in reaction to an ever-increasing concern with the effects of hazardous waste materials on the environment. The RCRA required the EPA to establish regulations to monitor and control hazardous waste disposal and to determine which forms of solid waste should be considered hazardous and thus subject to regulation.

In 1980, Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) commonly known as Superfund. The basic purpose of Superfund is to regulate the clean-up of disposal sites in which hazardous waste is leaking into the environment.

Superfund provides that when a release or a threatened release of hazardous chemicals from a site occurs, the EPA can clean up the site and recover the cost of the clean-up from the following persons:

- 1—the person who generated the wastes disposed of at the site
- 2—the person who transported the wastes to the site
- 3—the person who owned or operated the site at the time of the disposal
- 4—the current owner or operator.

A person falling into one of these categories is a potentially responsible party (PRP). Liability under Superfund is joint and several. A PRP who generated only a fraction of the hazardous waste disposed of at the site may be liable for all of the clean-up costs.