

Chapter 17—Environmental Laws and Pollution

Environmental law—all law pertaining to environmental protection—the body of statutory, regulatory, and common law relating to the protection of the environment.

Common Law Actions

Nuisance—a common law doctrine under which persons may be held liable for using their property in a manner that unreasonably interferes with others' rights to use or enjoy their own property.

For example, a factory that causes neighboring landowners to suffer from smoke, dirt, and vibrations may be left in operation if it is the core of the local economy.

Negligence and Strict Liability

For example, employees might sue an employer whose failure to use proper pollution controls contaminated the air, causing the employees to suffer respiratory illnesses. A developing area of tort law involves toxic torts—actions against toxic polluters.

Assessment of the Impact of Agency Actions on the Environment

Environmental impact statement—a statement required by the National Environmental Policy Act for any major federal action that will significantly affect the quality of the environment. The statement must analyze the action's impact on the environment and explore alternative actions that might be taken.

An EIS must analyze:

- 1. the impact on the environment that the action will have**
- 2. any adverse effects on the environment and alternative actions that might be taken; and**
- 3. irreversible effects the action might generate.**

Stationary Sources

Under the 1990 amendments to the Clean Air Act, 110 of the oldest coal-burning in the US had to cut their emissions by 40 percent by the year 2001 to reduce acid rain. Utilities were granted credits to emit certain amounts of sulfur dioxide and those that emit less than the allowed amounts can sell their credits to other polluters.

Hazardous Air Pollutants

The 1990 amendments to the Clean Air Act require industry to use pollution-control equipment that represents the maximum achievable control technology to limit emissions.

Navigable waterways

Navigable waterways—interpreted to include coastal and freshwater wetlands as well as intrastate lakes and streams used by interstate travelers and industries. In 1972, amendments to the Federal Water Pollution Control Act established the following goals: 1) make waters safe for swimming, 2) protect fish and wildlife, and 3) eliminate the discharge of pollution into water. The amendments required that municipal and industrial polluters apply for permits before discharging wastes into navigable waters.

Wetlands—areas of land designated by government agencies (such as the Army Corps of Engineers or the EPA) as protected areas that support wildlife and that therefore cannot be filled in or dredged by private contractors or parties.

Oil Pollution

The act created a \$1 billion oil clean-up and economic compensation fund and decreed that by the year 2011, oil tankers using US ports must be double-hulled to limit the severity of accidental spills.

Toxic Chemicals

Under FIFRA, pesticides and herbicides must be registered before they can be sold, certified and used only for approved applications and used in limited quantities when applied to food crops. If a substance is identified as harmful, the EPA can cancel its registration after a hearing.

A private party can petition the EPA to suspend or cancel the registration of a pesticide or herbicide.

The act was passed to regulate chemicals and chemical compounds that are known to be toxic—such as asbestos and polychlorinated biphenyls, commonly known as PCBs and to institute investigation of any possible harmful effects from new chemical compounds.

The RCRA was amended in 1984 and 1986 to decrease the use of land containment in the disposal of hazardous waste and to require compliance with the act by some generators of hazardous waste.

The Superfund Act (or CERCLA) has four primary elements:

- 1. it established an information-gathering and analysis system that allows federal and state governments to characterize chemical dump sites;**
- 2. it authorized the EPA to respond to hazardous substance emergencies and to clean up leaking sites**
- 3. it created a Hazardous Substance Response Trust Fund (Superfund) to pay for the cleanup of hazardous sites**
- 4. It allowed the government to recover the cost of cleanup from the persons who were responsible for hazardous substance wastes**