

COMMON LAW ENVIRONMENTAL CLAIMS

- **Nuisance:** A person may be liable if they use their property in a manner that *unreasonably interferes* with others' rights to use or enjoy their own property.
 - If an individual can identify a harm to his property rights distinct from that suffered by others, then he may obtain relief for the **private nuisance**.
 - On the other hand, if the harm is to the public at large, then generally a public authority will seek relief for the **public nuisance**.
- **Toxic Tort:** A theory of negligence or strict liability (depending on the circumstances) against those who pollute the environment with toxic substances.

ENVIRONMENTAL REGULATION

- **State and Local Regulation:** State and local *zoning laws* control land use and require permitting for commercial development, redevelopment, or renovations. Local ordinances also regulate waste and garbage storage, removal, and disposal, noise pollution, and billboards and other aesthetic “pollutants.”
- **Environmental Protection Agency (EPA):** The primary federal regulator of air, soil, and water quality, its duties include reviewing *environmental impact statements*, which analyze
 - (1) the **environmental impact** of a proposed federal action,
 - (2) any **alternatives** which might have less significant environmental consequences, and
 - (3) the long-term, **irreversible effects** of the action, if any.

AIR POLLUTION

- **Air Quality Control:** The Clean Air Act, as amended, empowers the federal government to control pollution emissions from both
 - **mobile sources**, such as cars and motorcycles, and
 - **stationary sources**, such as factories and power plants.
- **Hazardous Air Pollutants:** Pollutants likely to cause an increase in mortality or in serious, irreversible or incapacitating illnesses.
- The 1990 amendments to the Clean Air Act require major sources of hazardous air pollutants to use ***maximum achievable control technologies*** to reduce emissions and created emissions “credits,” which businesses that more effectively controlled their emissions could “trade” (*i.e.*, sell) to less-effective controllers.

CLEAN WATER ACT

- The **Clean Water Act** empowers the federal government to limit the discharge of pollutants into waters used for navigation, recreation, or swimming.
- The National Pollutant Discharge Elimination System regulates “**point source**” **pollutant discharge** from, *e.g.*, industrial, municipal, and agricultural facilities, by requiring non-exempt polluters to obtain a **permit** from the EPA, an authorized state agency, or an Indian tribe.
- Permits must be renewed every five years and regulators should approve an application for a new or renewed permit only if the discharge will not violate applicable water-quality standards.
- Clean Water Act regulations require new discharge sources to install the ***best available control technology (BACT)*** before commencing operations; existing sources may install the ***best practical control technology (BPCT)*** until they are able to implement BACT.

OTHER WATER QUALITY ISSUES

- **Wetlands:** The Clean Water Act prohibits filling or dredging of areas that are inundated or saturated by surface or ground water such that they support certain marsh vegetation and wildlife, unless approved by the Army Corps of Engineers.
- Recent Supreme Court decisions have scaled back the Clean Water Act's reach to cover only wetlands that are connected to relatively permanent, standing or flowing bodies of water.
- The **Safe Drinking Water Act** empowers the federal government to set maximum levels for pollutants in public water systems.
- The **Ocean Dumping Act** regulates the transportation and dumping of pollutants into ocean waters.
- The **Oil Pollution Act** creates liability for damage to natural resources, private property, and local economies caused by discharging oil into navigable water or onto an adjoining shore.

TOXIC AND HAZARDOUS SUBSTANCES

- **Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA):** Requires that all pesticides and herbicides be (1) registered prior to sale, (2) certified and used for approved applications only, and (3) used only in limited quantities on food crops. FIFRA also imposes strict labeling requirements.
- **Toxic Substances Control Act:** Requires manufacturers, processors, and others planning to use chemicals to first determine their effects on human health and the environment and empowers the EPA to (1) require special labeling, (2) limit use or production, or (3) prohibit use altogether.
- **Resource Conservation and Recovery Act (RCRA):** Authorizes the EPA to determine which forms of solid waste may be hazardous to human health or the environment and to monitor and control hazardous waste disposal.
- **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, a.k.a. “Superfund”):** Regulates the clean-up of hazardous waste disposal sites and provides that the EPA may recover the cost of cleaning up such sites from, jointly and severally, (1) waste generators, (2) waste transporters, or (3) past or present owners or operators of the site – collectively called *potentially responsible parties*.