

Environment Law

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Law 10

Common Law Environment Claims

- *Toxic Tort*: A lawsuit against a manufacturer of a toxic substance for harm caused by the manufacture or disposal of that substance
- *Nuisance*: an unreasonable interference with the use and enjoyment of one's property, usually repeated or continued for a prolonged period of time

A *private nuisance* is an interference with a person's enjoyment and use of his land. The law recognizes that landowners, or those in rightful possession of land, have the right to the unimpaired condition of the property and to reasonable comfort and convenience in its occupation.

A *public nuisance* covers a wide variety of minor crimes that threaten the health, morals, safety, comfort, convenience, or welfare of a community. Violators may be punished by a criminal sentence, a fine, or both.

Environment Regulation

- **State and Local Regulation:** State and local *zoning laws* control land use and require permitting for commercial development, redevelopment, or renovation. Local ordinance also regulate waste and garbage storage, removal, and disposal, noise pollution.
- Environmental Protection Agency (EPA): The primary federal regulator of air, soil, and water quality, its duties include reviewing environmental impact statements, which analyze
 - the environmental impact of a proposed federal action,
 - Alternatives (when there is an unresolved conflict concerning alternative uses of available resources)
 - the long term irreversible effects of the action, if any.

Environment Regulation Cont...

- The 1990 amendments to the Clean Air Act require major sources of dangerous air pollutants to use *maximum achievable control technologies* to cut emissions and created emissions “credits,” which businesses that more successfully controlled their emissions could “trade”
- Hazardous air pollutants are those known to cause cancer and other serious health impacts. The Clean Air Act requires the EPA to regulate toxic air pollutants, also known as air toxics, from categories of industrial facilities in two phases.

Air Quality Control: The Clean Air Act, as amended, empowers the federal government to control pollution emissions from both

Stationary Sources- are like power plants and factories

Mobile Source- example of Motorcycles and cars

Clean Water Act

*The Clean Water Act commissions the federal government to restrict the clearance of wastes and pollutants into water sources such as those used for navigation and recreation.

- The National Pollutant Discharge Elimination System (NPDES) controls "point source" (pollutant discharge) from several different facilities for example: Industrial Municipal and Agricultural facilities.

- The (NPDES) is responsible for non-exempt polluters to have access to a permit for 3 different sources:
(1)- An authorized state agency (2)- Environmental Protection Agency E.P.A (3)- Indian tribes

- Permits by these agencies have to be renewed after 5 years
 - Regulators can only approve new or renewal permits if the discharge created by those applicants does not breach pertinent water quality specifications

- (B.A.C.T) "Best Available Control Technology" is a requirement by the Clean Water Act to be installed to regulate waste before they can begin operation.

- Existing sources can use (BPCT) "Best Practical Control Technology until they can implement (B.A.C.T)

- Wetlands: CWA - Clean Water Act, disallows the filling or dredging of wetlands unless there is a permit obtained from the Army Corp of Engineers. The E.P.A defines these lands as "areas that are covered or saturated by surface or groundwater to the degree that they support certain wildlife and vegetation.

Continued: Clean Water Act

- Supreme Court decision has reduced the reach of the Clean Water Act to include only scales of water connected to relatively permanent standing or flowing bodies of water

- Violation of Clean Water Act-

- Because the pollution control is based on a permit system, enforcement of this permit is the Key.

- States have primary control and enforcing the permit system subject to the EPA overview.

- Discharging waste into navigable waters without a permit, or over the limitations is a direct violation of the CWA.

- Applicant firms monitor their own account and fill out "Discharge Monitoring Reports."

Where reports are available to the public.

- Violators of the CWA must report violations and are subject to fines.

- Depending on the violations penalties range from \$10,000 but never more than \$25,000 per violation.

- Lying or cover up of violation is received more negatively than admittance of initial violation and can be qualifications for shutdown.

- Serious and internal violations can lead to criminal prosecution with fines and imprisonment.

A Few Other Important Passes

Water Acts

- Safe Drinking Water Act- gives power to the federal government to set maximum levels of pollutants allowed in drinking water.
- Ocean Dumping Act- gives the federal government the power to regulate the transportation and dumping of pollutants into the ocean.
- Oil Pollution Act- creates liability for damage of private property, natural resources, and the local economy caused by discharge of oil on nearby shores and navigated waters.

Toxic and Hazardous Substances

- FIFRA- " Federal Insecticide Fungicide and Rodenticide Act",
 - Demands all herbicides and pesticides be:
 - 1.) Registered before their sale or purchase.
 - 2.) That the use of these substances be certified and used only on approved applications.
 - 3.) Used in very small quantities on food crops.
- Resource Conservation and Recovery Act (RCRA):
 - Gives authorization to the E.P.A, of measuring which forms of solid waste are most hazardous to human and environmental health
 - Along with authority to watch and regulate disposal of hazardous waste
- Comprehensive Environmental Response Compensation and Liability Act (C.E.R.C.L.A) aka "Superfund":
 - Oversees the cleanup of hazardous waste dump sites
 - Arranges for the E.P.A to be compensated for the cost of cleanup from potential responsible parties such as
 - 1.) Waste generators
 - 2.) Waste transporters
 - 3.) Past or present owners or operators of such cleanup sites