

Environmental Law Primer

Adapted from Vermont
Law School's
*Environmental Law
Primer for Journalists*

General Categories

- Command and Control
- Liability
- Disclosure
- Ecosystem and Place-based Programs
- Marketable Permits, Offsets, and Cap & Trade
- Environmental Assessment and Planning
- Cross-Compliance
- Preservation
- Wildlife
- Conservation

Command and Control

- Top-down, technology-based standards designed to reduce pollutants at the source;
- Ambient, health-based standards designed to protect humans and the environment from exposure;
- Permits that set pollution limits for individual point sources;
- Require monitoring and self-reporting;
- Enforcement provisions with substantial penalties;
- Citizen suits;
- Provisions allowing states and tribes to administer or supplant federal programs.

Examples: Clean Air Act, Clean Water Act, Safe Drinking Water Act

Liability for Contamination and Damage

- These laws impose liability on parties responsible for spills and releases.
- Characteristics:
 - Strict liability
 - Retroactive liability
 - Joint and several liability
 - Transferable liability
 - Liability for damages to natural resources
- **Example**: Comprehensive Environmental Response Compensation and Liability Act

Disclosure

- These laws require regulated entities to publicly report releases and spills of hazardous materials and toxic substances.
- **Examples:**
 - Section 311 of the Clean Water Act
 - Oil Pollution Act of 1990
 - Emergency Planning and Community Right-to-Know Act (Toxics Release Inventory) of 1986

Ecosystem and Place-Based Programs

- These laws take a comprehensive ecological approach to regulating land and water uses within large ecosystems.
- **Examples:**
 - Coastal Zone Management Act of 1972
 - Clean Water Act of 1987 (Establishing “place-based” programs in the Great Lakes, Chesapeake Bay, Long Island Sound, and Lake Champlain)

Marketable Permits, Offsets, and Cap & Trade Programs

- Set limits on the amount of pollution that can be introduced into the air and water, and then allow trading in pollution credits to achieve reductions.
- Generally embedded within “command and control” regulatory programs.
- **Examples:**
 - Acid Rain Control Program under the Clean Air Act
 - Water Pollution Trading Program under § 402 of CWA
 - Wetland Mitigation Bank program under § 404 of CWA
 - Habitat Conservation Planning program under § 10 of ESA

Environmental Assessment and Planning

- These laws require federal agencies to engage in environmental assessments and public participation processes.
- **Examples:**
 - National Environmental Policy Act of 1969
 - National Historic Preservation Act of 1966

Cross-Compliance

- These laws use the “power of the purse.”
 - Condition federal assistance to encourage conservation practices on private land.
- **Examples:**
 - Coastal Barrier Resources Act
 - Prohibits federal flood insurance or disaster relief for development on designated barrier islands and beaches.
 - Food Security Act of 1985 (Swampbuster and Sodbuster)
 - Prohibits farm subsidies for crops grown on designated wetland and erodible soils.

Preservation

- These laws seek to preserve important natural, historical, and cultural resources by prohibiting development and activities that would damage, harm, or degrade them.
- **Examples:**
 - Antiquities Act of 1906
 - National Park Service Act of 1916
 - Wilderness Act of 1964
 - National Marine Sanctuaries Act of 1972

Wildlife

- These laws seek to protect and manage fish and wildlife and their habitat.
- Characteristics:
 - Restrictions on fishing, hunting, trapping, harassment, and other direct forms of “take”;
 - Restrictions on activities that cause indirect harm to species through habitat destruction and degradation;
 - Cooperative agreements with states;
 - Citizen suits or judicially enforceable claims;
 - Special consultation and other planning requirements;
 - Mitigation requirements.

Wildlife

Examples:

- Migratory Bird Treaty Act of 1916
- Marine Mammal Protection Act of 1972
- Endangered Species Act of 1973
- Magnuson-Stevens Fishery Management and Conservation Act of 1996

Conservation

- These laws seek to manage public lands and waters for “multiple uses” including mining, forestry, grazing, recreation, water supply, and fish and wildlife habitat.
- Characteristics:
 - An “Organic Act” setting the management goals and policies for the relevant federal land system;
 - A classification system for permitted and unpermitted uses;
 - Long term (e.g. ten year) management plans;
 - Public participation and appeals;
 - Environmental assessments and consideration of alternatives;
 - Monitoring of performance standards for commodity outputs and amenity values.

Conservation

Examples:

- Multiple Use Sustained Use Yield Act of 1960
- National Wildlife Refuge Administration Act of 1966
- National Forest Management Act of 1974 (NFMA)
- Federal Land Policy and Management Act of 1976