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
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