

# ENVIRONMENTAL LAW



## ENVIRONMENTAL REGULATION METHODS

### COMMAND & CONTROL REGULATIONS

- Regulations that directly impose specific obligations such as limitations may be placed on amounts of pollutants a facility may emit
- A technology-based regulation is a standard or limitation that requires a specific pollution control to be achieved with current technology. They are based on available control technologies and associated costs (parts of CAA limitations under the Clean Water Act)
- An environmental quality-based regulation is a standard or limitation that attempts to achieve a set level of protection to human health or the environment, considers impact of pollutants on health and/or environment (such as NAAQS under the Clean Air Act)

### MARKET INCENTIVES

- Regulatory techniques that use market forces to control environmental pollution
- Usually allow operators of individual facilities, not the government, to make decisions about pollution control levels that they want to achieve
- Different from any taxes and/or fees which are based on amount of pollution produced by an industry
- Marketable pollution rights are market forces by establishing a set level of allowable pollution, giving level to meet the goal, and allowing facilities to buy and sell these allocated rights
- Financial subsidies are given to industries to help control pollution

### INFORMATION DISCLOSURE

- Emergency Planning and Community Right-to-Know Act (EPCRA) requires facilities to calculate for an annual (total) the amount of hazardous information that they release into the environment; information must be provided to the public
- National Environmental Policy Act (NEPA) requires government agencies to prepare Environmental Impact Statements which describe the environmental consequences of certain government proposals

## CONSIDERATIONS

### ECONOMIC CONSIDERATIONS

- Cost vs. benefits analysis compares the cost of a regulation with the regulation's benefits
- Cost effectiveness analysis compares cost between two viable options of achieving a certain goal
- Cost consideration analysis looks at single costs without determining how it affects the final decision
- Cost obviousness analysis does not consider costs at all

### ETHICAL CONSIDERATIONS

- Environmental regulations may raise ethical concerns
- Includes extent to which humans are required to protect nature and other non-human species, protecting future generations, and so on

## NATIONAL ENVIRONMENTAL POLICY ACT

### DEFINITION

- NEPA requires that the federal government prepare and publish information on environmental effects of government proposals (NPSA § 101(2)(2)(C))
- Requires agencies to prepare Environmental Impact Statements (EIS) on federal actions that may significantly affect quality of human environment
- Established Council on Environmental Quality (CEQ), oversees implementation of regulations, offers coordination among federal agencies, and prepares annual reports of environmental conditions

### EIS PROCESS

- Federal agencies must follow certain steps when creating EIS requirements
- Determine whether action is subject to statutory or other requirements
- Prepare Environmental Assessment (EA) for final if action requires an EIS
- Issue a Finding of No Significant Impact (FONSI) document if the agency finds that an EIS is unnecessary or publish a notice of intent to prepare an EIS where necessary
- Publish a draft EIS with a full analysis
- Make the draft available for public comment
- Issue a final EIS; they involve judicial review

### DEFINITION OF EIS

- Agencies are not mandated to take any particular action
- An agency's decision to take an action will not be invalidated as a violation of NEPA
- Agencies often act under authority of statutes with substantive environmental provisions

## COMMON LAW TORTS

### DEFINITION OF TORTS

- Negligence** Conduct that falls below a standard of care that is owed to another party
- Nuisance** Conduct that unreasonably interferes with use and enjoyment of land • May be private or public • May be negligent or intentional
- Strict Liability** Finding of liability without any regard to the defendant's negligence • Also applies to product liability cases
- Trespass** Physical invasion of another person's land

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# Environmental Law Resource Guide

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