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Environment

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Legislation

1 Main environmental regulations

What are the main statutes and regulations relating to the environment?

The following statutes and their accompanying regulations constitute the principal set of national environmental legal requirements in the United States:

- Clean Air Act (CAA) (1970) – regulation of air emissions from stationary and mobile sources;
- Clean Water Act (CWA) (1972) – regulation of water discharges and quality standards for surface waters;
- Comprehensive Environmental Response, Compensation, and Liability Act (1980) (Superfund or CERCLA) – remediation of historic disposal sites;
- Emergency Planning and Community Right to Know Act (EPCRA) (1986) – reporting of releases to air, water and onto land;
- Endangered Species Act (ESA) (1973) – protection of endangered and threatened species;
- Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (1947, 1972) – registration of and controls over pesticides;
- National Environmental Policy Act (NEPA) (1970) – requires federal agencies to consider environmental impacts of projects that could significantly impact the environment;
- Oil Pollution Act (OPA) (1990) – prevention of and responses to oil spills;
- Resource Conservation and Recovery Act (RCRA) (1976) – regulation of waste management;
- Safe Drinking Water Act (SDWA) (1974) – establishes drinking water standards for tap water and rules for underground injection; and
- Toxic Substances Control Act (TSCA) (1976) – regulation of chemicals and products containing them.

Many states have enacted their own, sometimes more stringent and often overlapping, environmental regulatory programmes. Some states also have adopted groundwater protection schemes, additional recycling requirements and state equivalents of NEPA.

2 Integrated pollution prevention and control

Is there a system of integrated control of pollution?

The US Environmental Protection Agency (EPA) administers most of the national environmental statutes and regulations, but there is no general system providing integrated pollution prevention and control. State and local authorities may impose additional requirements.

3 Soil pollution

What are the main characteristics of the rules applicable to soil pollution?

Superfund's remediation authorities extend to soil pollution and most states have adopted similar laws, and have also adopted separate voluntary cleanup and brownfields redevelopment programmes that address soil and other media. See question 11 for more details.

4 Regulation of waste

What types of waste are regulated and how?

RCRA defines 'solid waste' as 'any garbage, refuse, sludge […] and other discarded material [...]'. For RCRA purposes, 'solid' wastes include solid, liquid, semisolid or contained gaseous material.

Wastes classified as 'hazardous wastes', including certain specifically listed wastes and wastes that fail generic characteristics of toxicity, reactivity, corrosivity or flammability, are subject to a cradle-to-grave regulatory scheme, including detailed design and operating standards for treatment, storage and disposal (TSD) facilities, which require state or federal TSD permits. Substantial litigation and associated regulatory action have occurred with regard to what types of reused, recycled and reclaimed materials are subject to RCRA hazardous waste regulation. Almost all hazardous wastes are subject to stringent treatment requirements (incineration, stabilisation) before they may go into a landfill. 'Universal' wastes, including batteries, certain suspended or cancelled pesticides, light bulbs and lamps and mercury-containing equipment (states can expand this list) are subject to a set of streamlined hazardous waste storage, labelling and transportation requirements. Municipal solid wastes are generally subject to state transportation and disposal requirements.

5 Regulation of air emissions

What are the main features of the rules governing air emissions?

Most facilities that produce air emissions likely will be regulated by the CAA and must comply with federal and state level requirements; the latter are implemented through individual state implementation plans (SIPs). Existing sources of air pollution often must obtain pre-construction and operating permits and comply with equipment standards or emission limits that vary based on the type of facility and the type and amount of emissions. Thresholds for permitting and equipment standards are generally more stringent for facilities that emit hazardous air pollutants or that are located in areas with poor air quality. Many larger new sources and modifications to existing larger sources will trigger a 'New Source Review' process that requires pre-construction permitting and pollution control equipment, as well as emissions offsets in areas with poor air quality. Larger sources also have to consider greenhouse gases in the New Source Review process. Mobile sources and fuels are highly regulated under a variety of standards.

6 Climate change

Are there any specific provisions relating to climate change?

The US has not ratified the Kyoto Protocol. Legislation that would implement a mandatory cap-and-trade (CAT) programme to reduce greenhouse gas (GHG) emissions appears unlikely to be enacted at the federal level in the near- or medium-term.

In the absence of specific legislation, EPA has taken several steps to impose GHG-related regulations under its existing CAA authority. A rule adopted in 2009 requires mandatory reporting of GHG emissions from large sources in the US. This rule requires suppliers of fossil fuels or industrial greenhouse gases, manufacturers of many vehicles and engines, certain industrial source categories and certain other facilities to submit reports to EPA beginning in 2011. A series of additional rules, adopted in early 2010, provides for the phased application of GHG-related requirements on stationary sources beginning in 2011. These stationary-source related rules are currently being challenged in court, although the rules have not been stayed and permitting has begun. Various petitions for additional EPA rulemaking relating to mobile sources are also the subject of ongoing litigation. There have been a number of efforts in Congress (so far unsuccessful) to eliminate EPA's authority to impose GHG-related rules.

In the meantime, many states and local governments have taken steps to establish GHG standards and emission reduction programmes, and several groups of states are developing regional CAT programmes. The Regional Greenhouse Gas Initiative (RGGI), made up of most of the northeastern US states, continues to apply to GHG emissions from fossil fuel burning power plants. The Western Climate Initiative, which includes most of the western states as well as many Canadian provinces and Mexican states, continues to develop an economy-wide CAT programme that is scheduled to go into effect in 2012. California is continuing to implement its ambitious AB 32 programme, including adoption in October 2011 of the final CAT regulation. The regulation covers 85 per cent of GHG emissions in California and will apply in 2013 for industrial sources and in 2015 for fuel distributors.

7 Protection of fresh water and seawater

How are fresh water and seawater, and their associated land, protected?

The objective of the CWA is to ensure that 'Waters of the US' are of a quality to be fishable and swimmable. 'Waters of the US' is defined as surface waters, including fresh water and marine waters, as well as jurisdictional wetlands. Industrial and municipal 'discharges' of wastewater and designated discharges of storm water to these waters that pass through a 'point source' are subject to permitting. 'Discharges' of fill material are also subject to permitting. Permits must contain the more stringent of (i) technology-based effluent limitations reflecting uniform national standards or (ii) effluent limitations designed to protect the water quality of the specific water body to which the discharge is made. Extraction of water for consumptive use is regulated under state law.

8 Protection of natural spaces and landscapes

What are the main features of the rules protecting natural spaces and landscapes?

There are several categories of federal lands in the US, each with a different primary purpose and each governed by a different federal agency, including national parks, monuments and similar sites; natural resource or rangelands; national forests; national wildlife refuges; wild and scenic rivers; wilderness areas; and military lands. The Department of the Interior manages most public lands, including 395 national parks, monuments, battlefields, military parks, historical parks, historic sites, lakeshores, seashores, recreation areas, scenic rivers and trails, and the White House, approximately 330 million acres of public rangelands and the 1.7 billion acres of the Outer Continental Shelf. National parks and monuments are managed in accordance with the goals and standards set forth in the legislation or regulation creating the specific site. Economic development of natural resources is prohibited in most national parks. Public rangelands are managed in accordance with land use plans reflecting principles of multiple use and sustained yield. Wilderness areas are roadless areas (within public lands) designated to be preserved in their natural condition, unaffected by human activities. The Department of Agriculture also manages over 191 million acres of public land, including national forests. National forests must be administered for multiple uses, including timber production, outdoor recreation, grazing, watershed protection and wildlife and fish conservation.

Every state also has a system of protected areas within its boundaries that provide recreational opportunities and conservation benefits, and local jurisdictions often own and maintain parks and playgrounds that protect small natural areas and open spaces.

9 Protection of flora and fauna species

What are the main features of the rules protecting flora and fauna species?

The ESA protects listed endangered and threatened plants and animals and the habitats upon which they depend. The ESA requires each federal agency to ensure that any action it authorises, funds or carries out does not 'adversely impact' any listed species, or 'destroy or adversely modify' any critical habitat for that species. The ESA further prohibits anyone from 'taking' a listed species and from engaging in commerce in listed animals or plants or parts thereof. 'Taking' is broadly defined to include killing, capturing and destroying habitat.

10 Noise, odours and vibrations

What are the main features of the rules governing noise, odours and vibrations?

Noise, odours and vibrations are primarily regulated, if at all, at the state or local level, or both. Many states have noise pollution programmes, although regulatory requirements in this area vary widely. Federal noise regulations cover standards for transportation equipment, air and motor carriers, low-noise-emission products and construction equipment, enforced by EPA or other designated federal agencies. Workplace exposure to noise is regulated by the US Occupational Safety and Health Administration (OSHA). Under general tort law principles, private parties may bring nuisance actions for excessive noise, odours and vibrations.

11 Liability for damage to the environment

Is there a general regime on liability for environmental damage?

Superfund is the federal statute that provides for the remediation of hazardous substances released into the environment. Potentially responsible parties (PRPs) liable for remediation under Superfund include entities that arrange for the disposal of hazardous substances, transporters and current and former owners and operators of contaminated sites. These PRPs may be strictly and retroactively liable for investigation, evaluation and remedial action, which is generally selected by EPA in compliance with the National Contingency Plan. Superfund also provides that federal and state 'trustees' can recover from PRPs the costs associated with the injury to, destruction of or loss of natural resources. In addition, RCRA allows governmental agencies and private parties to seek injunctive relief for imminent and substantial endangerment to the environment. Private parties claiming injury to property from a defendant's pollution or hazardous activities may seek damages or relief in a tort action.

12 Environmental taxes

Is there any type of environmental tax?

Most taxes in the US that apply to products and processes having environmental risks are levied at the state or local levels. Among the products and activities taxed by various states are waste disposal, chemicals, petroleum, tyres, air emissions, battery disposal, oil spill response, litter control and water quality.

There are few environmental taxes imposed at the federal level. Under the Oil Pollution Act of 1990, a trust fund established to clean up oil spills if the responsible party fails to do so is financed by a barrel tax collected from the oil industry on petroleum produced in or imported into the US. The Energy Policy Act of 2005 used several tax incentives to support policy goals, including support for alternative energy sources, and extended the tax on certain motor fuels to fund the Leaking Underground Storage Tank Trust Fund. There is a federal tax imposed on the use or importation of ozone-depleting chemicals. The abandoned mine land reclamation programme under the Surface Mine Control and Reclamation Act is funded by a tax on current production of coal.

Hazardous activities and substances

13 Regulation of hazardous activities

Are there specific rules governing hazardous activities?

Generation, treatment, storage, disposal and management of hazardous wastes are regulated under the cradle-to-grave permit and regulatory management programme under RCRA. Transport and handling of hazardous materials are regulated by the Department of Transportation under the Hazardous Materials Transportation Act. OSHA sets general industry standards that cover a wide range of activities, as well as specific standards for the construction, maritime and agriculture industries, designed to reduce on-the-job injuries and to limit workers' risks of developing occupational diseases. Workplace hazards are subject to extensive and specific regulations, including standards for process safety management of highly hazardous chemicals and employee exposure to various air contaminants, asbestos and other substances. There are licensing, training and certification requirements for certain OSHA-regulated activities. Also included among the OSHA standards are requirements that employers provide personal protective equipment and grant employees access to their medical records.

14 Regulation of hazardous products and substances

What are the main features of the rules governing hazardous products and substances?

All manufacturers (including importers), processors, distributors and users of chemical substances may be subject to TSCA reporting, recordkeeping and other regulatory requirements. Manufacturing a non-exempt new chemical substance (not on the TSCA Inventory) is prohibited unless and until EPA approves a pre-manufacture notification application for the substance, with or without restrictions on the new chemical. Similar notification and review requirements apply to designated 'significant new uses' of hundreds of chemicals. TSCA also gives EPA extensive authority to impose testing requirements or other regulatory restrictions on chemicals, although some of those authorities have been little used. Potential changes to TSCA and its implementation are currently receiving substantial attention in the form of proposed legislation that would impose significant new requirements on producers and users of chemicals and EPA initiatives intended to make more aggressive use of its authority under the existing TSCA provisions. The Consumer Product Safety Improvement Act of 2008, implemented by the Consumer Product Safety Commission (CPSC), imposes limitations on the levels of lead and phthalates allowed in children's products. The CPSC also administers the Federal Hazardous Substances Act, which requires precautionary labelling to alert consumers to the potential hazards that certain products present. The Federal Trade Commission has established 'Green Guides' for environmental marketing claims. There are a number of additional requirements imposed by states that regulate and restrict the sale of certain products that contain specified hazardous substances.

Industrial accidents

15 Industrial accidents

What are the regulatory requirements regarding the prevention of industrial accidents?

Under the 'general duty' clause of the Occupational Safety and Health Act of 1970, each employer is required to provide to employees a place of employment free from recognised hazards. OSHA has promulgated numerous specific standards for industrial processes, establishing specific workplace practices as well as imposing training requirements. For instance, OSHA's process safety management standard addresses hazards from the use of highly hazardous chemicals, and its hazardous waste operations and emergency response standard requires training and control measures for clean-up operations.

EPCRA imposes requirements on facilities to report chemical storage and release information, and also requires state and local governments to undertake emergency planning activities. In addition, under the CAA, facilities that produce, handle, process, distribute or store certain chemicals must prepare and submit to EPA a Risk Management Plan (RMP). Certain facilities are also required to develop and implement oil spill prevention, control and countermeasures, and prepare spill prevention, control and countermeasure plans.

Environmental aspects in transactions

16 Environmental aspects in M&A transactions

What are the main environmental aspects to consider in M&A transactions?

The three areas of environmental concern in M&A transactions are (i) regulatory compliance; (ii) potential costs associated with onsite remediation at the target's facilities; and (iii) potential liabilities associated with the current and historic generation and offsite disposal of wastes from the target's operations. The second and third categories are of particular concern because liability under Superfund and some state statutes for onsite remediation and for historic offsite disposal is strict (meaning regardless of fault) and retroactive. Additionally, continuation of regulatory non-compliance or a failure to address environmental conditions posing a danger to human health and welfare can result in criminal liability.

A purchaser of shares acquires the corporate target with all of its assets and liabilities, including the environmental liabilities identified above. A purchaser of assets may be able to acquire the assets free of environmental liabilities arising from pre-closing regulatory non-compliance by the target and from historic offsite disposal. However, there is case law under which asset purchasers have been held responsible for these types of environmental liabilities under several theories. Moreover, if the purchaser acquires contaminated real property as part of the assets, under the federal Superfund statute and many analogous state statutes the purchaser becomes liable for such contamination simply by becoming the owner of the property.

17 Environmental aspects in other transactions

What are the main environmental aspects to consider in other transactions?

The three areas of environmental concern identified in question 16 are equally important in other transactions. The scope of many environmental laws has been interpreted quite broadly to impose liability on entities beyond the actual owner of a facility or business. For

instance, lenders have been held liable in some circumstances for their borrower's environmental liabilities (although there are some defences and 'safe harbours' available for lenders). An entity acquiring contaminated real property (whether through a purchase, foreclosure or corporate restructuring) will be liable for the remediation of such contamination, even if the acquirer had nothing to do with the cause. The acquirer may have contractual indemnity or statutory rights of contribution from one or more prior owners, but enforcement authorities can choose to seek recourse against only the current owner. Transactions involving entities in bankruptcy present unique environmental issues. Environmental claims that 'continue' after a transaction or even after an entity emerges from bankruptcy, such as obligations to correct ongoing non-compliance and to remediate contaminated property, are not discharged as a result of the bankruptcy.

Environmental assessment

18 Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

Under NEPA, federal agencies must evaluate the potential environmental and socio-economic impacts of all of their own actions and programmes. In addition, federal agencies must evaluate the potential impacts of private actions that require federal approval or permitting or that may be supported by federal funding. NEPA covers a broad spectrum of federal actions and is not restricted in any way to purely industrial activities. In fact, many major NEPA documents address the federal government's natural resource management decisions involving both conservation and resource development. A number of states have comparable laws for environmental impact assessments, although the requirements of these laws vary significantly.

19 Environmental assessment process

What are the main steps of the environmental assessment process?

NEPA requires a formal environmental impact statement before the initiation of a proposed major federal action 'significantly affecting the quality of the human environment'. The impact statement includes a general notice of intent with regard to the proposed action, and identifies resources or values that would be adversely affected, alternatives and mitigation measures. Initially, a detailed draft impact analysis is prepared and a notice of public comment on the draft is issued. Comments are solicited and considered. A final impact statement is then prepared, which responds to the public comments and refines or modifies the proposed action, as appropriate. The adequacy of the final impact statement may be challenged; these judicial challenges can delay proposed projects for years and even effectively terminate them.

The preparation of a less formal environmental assessment is required for minor federal actions. This process involves public comments and participation in various degrees depending on the agency's standards and practices.

Regulatory authorities

20 Regulatory authorities

Which authorities are responsible for the environment and what is the scope of each regulator's authority?

EPA is the lead federal agency for implementing most of the national environmental statutes. Separate air emission, water discharge and, in some cases, hazardous waste treatment, storage and disposal, permits are required for many industrial operations, with most permits issued by states pursuant to authority delegated by EPA. The Department of the Interior and the Forest Service implement a variety of laws addressing environmental review, wildlife and cultural and historic resources. The US Department of Justice is responsible for litigating cases arising under federal laws relating to the protection of the environment and natural resources. Each state has at least one agency with responsibility for administering environmental laws and enforcement. As a general rule there is overlapping authority, and administration and enforcement of environmental laws are shared between the federal and state agencies. States generally take the lead under the CAA, CWA, and RCRA on inspections and enforcement, with EPA retaining significant 'overfiling' enforcement authority with regard to violations of these statutes at individual facilities. In other areas (eg, TSCA, FIFRA, EPCRA), EPA generally takes the lead on enforcement.

21 Investigation

What are the typical steps in an investigation?

Although state and federal environmental agencies routinely conduct inspections of regulated facilities, comprehensive governmental investigations are not usually initiated as a result of most regulatory compliance issues. Many compliance issues, whether self-disclosed or identified as a result of an agency inspection, are resolved informally. If agency inspectors identify non-compliance through review of a regulated facility's records or an onsite inspection, under most circumstances agency personnel initially will discuss the alleged violations with facility personnel. If a regulatory agency initiates a comprehensive or even a limited investigation, it will typically make a site inspection, undertake testing, sampling or similar activities, conduct interviews of facility personnel and prepare a written report and notice of violation identifying the practices or events constituting alleged non-compliance. The facility is entitled to obtain split samples of materials removed by the agency for testing, to retain copies of records requested by the agency and to be represented by counsel throughout the investigation.

22 Powers of regulatory authorities

What powers of investigation do the regulatory authorities have?

Federal and state environmental agencies have extensive authority (enforceable in court) to obtain environmental compliance records. They also have broad authority to conduct inspections, including unannounced and warrantless inspections, of facilities subject to environmental laws and regulations, and to take samples. If facility personnel resist government requests, agencies have broad powers of subpoena and judicial sanctions to force facilities to provide access or turn over information. Although agency access requests and demands for information can be challenged in court on the basis that a request is overly broad or burdensome or not relevant to the agency's statutory authority, such challenges are rare.

23 Administrative decisions

What is the procedure for making administrative decisions?

Most administrative decision-making processes are open and allow for participation by interested parties and the general public. The procedural aspects of administrative decision-making vary based upon a number of factors, including the agency involved (eg, federal or state), the type of decision (eg, individual permit or variance, enforcement) and the environmental statute under which the decision is made. Some administrative processes are quite formal, under which an administrative law judge makes a decision after a hearing with formal statements, witnesses testifying under oath and cross-examination. Others are more informal and include written submissions (after notice) and a final decision based solely on the written submissions.

24 Sanctions and remedies

What are the sanctions and remedies that may be imposed by the regulator for violations?

Federal and state environmental statutes authorise a range of civil and criminal penalties for violations, as well as injunctive relief. Penalties often are calculated on a per day, per violation basis (many federal environmental statutes authorise penalties of up to US$37,500 per day per violation). Federal and state agencies also can pursue injunctive relief to require the abatement of the violation or environmental harm, such as by requiring the installation of pollution control equipment, the cessation of an activity alleged to be in violation of law and even the shutdown of a facility.

25 Appeal of regulators' decisions

To what extent may decisions of the regulators be appealed, and to whom?

There are appeal mechanisms for virtually all formal administrative decisions from environmental agencies at the federal and state level. The appeal procedures and the entity to which the appeal is made differ by agency, type of decision and the environmental statute under which the decision was made. Appeals can be based on factual findings and legal conclusions and can also relate to the extent of the remedy imposed by the decision-maker. In most cases, a party may appeal the final agency decision (meaning the decision made at the highest administrative level) to a court. As a general rule, courts will allow an agency deference in its decision-making, particularly with regard to factual findings.

Judicial proceedings

26 Judicial proceedings

Are environmental law proceedings in court civil, criminal or both?

Federal and state environmental statutes generally provide that violations will give rise to administrative or civil enforcement proceedings. In addition, these statutes often provide that a party may be prosecuted in a criminal case if that party has knowingly violated the law.

27 Powers of courts

What are the powers of courts in relation to infringements and breaches of environmental law?

In civil cases brought by governmental entities, courts are generally authorised to require violators of environmental legal requirements to pay penalties and to undertake injunctive relief to abate the violation and/or address the environmental impacts of the violation. In a criminal case, defendants found guilty can be ordered to pay a fine and to serve time in prison.

28 Civil claims

Are civil (contractual and non-contractual) claims allowed regarding breaches and infringements of environmental law?

Certain environmental statutes (eg, CAA, CWA, and RCRA) contain 'citizen suit' provisions authorising non-governmental entities to sue third parties for injunctive relief for violations. A private party claiming injury from hazardous activities also may seek damages or injunctive relief in a tort action. No contractual relationship among the private parties is necessary, but contracts can create obligations for compliance with environmental laws.

29 Defences and indemnities

What defences or indemnities are available?

Under most federal and state environmental statutes, statutes of limitations (five years is common) apply to limit the time period within which claims of violations of environmental law can be brought. Given the highly specific and complex nature of environmental statutes and regulations, most defences raised focus on issues of regulatory or statutory interpretation. Factual defences are available as well. A liable party could have indemnity rights against other parties or be a party to contracts with other parties under which the violator in turn may seek recovery, but the violator may not use such indemnities as shields from liability to the government. In Superfund litigation, in which multiple parties can be liable, courts have historically held that liability is strict and joint and several, although recent US Supreme Court case law may have modified those holdings regarding joint and several liability. Further, liability under Superfund in most instances is not based on a violation of law, and the statute is applied retroactively to impose liability for historic waste disposal that often occurred many years in the past.

30 Directors' or officers' defences

Are there specific defences in the case of directors' or officers' liability?

Routine environmental regulatory violations do not, as a general rule, give rise to claims of officer and director liability. However, there are various legal theories under which corporate officers and directors can be held personally liable under environmental and other public health laws. For instance, they can be pursued civilly if the corporate veil can be pierced or if they personally participated in the company's improper activity. Civil liability also may be imposed if a corporate officer exercised substantial control and supervision over a project that resulted in an environmental problem, even if there was no personal participation in the specific improper action. Corporate officers, directors and employees can be pursued criminally if they personally commit a crime, if they aid and abet a crime or if they fail to prevent the commission of a crime by others within the corporation by neglecting to control or supervise the conduct of those subject to their control or fail to implement measures that will ensure violations do not occur. Some federal environmental statutes, including the CAA, specifically state that an 'operator' can include 'any person who is senior management personnel or a corporate officer'. In addition, a number of reports submitted to EPA and state agencies are required to include formal certifications (under oath) with regard to the accuracy of the information contained therein, and these certification requirements have provided the basis for claims against corporate officers.

31 Appeal process

What is the appeal process from trials?

In the federal courts, a judgment from a trial level federal district court is directly appealable to one of 12 federal circuit courts of appeals. From the circuit court of appeals a party may petition the US Supreme Court to hear an appeal, but the Supreme Court's jurisdiction is discretionary.

Each of the 50 states has its own court system, but generally there is a right of review from the trial level to an intermediate appellate court and then to the state's highest court. In many states, the highest court's jurisdiction is discretionary.

Update and trends

The process known as hydraulic fracturing, to enhance natural gas extraction, is currently subject to legislative and regulatory scrutiny due to concerns that the process may pose a threat to groundwater. Hydraulic fracturing is a technology that has been used by gas producers for decades to stimulate wells and has developed in recent years in conjunction with advanced horizontal drilling techniques as a method to recover natural gas from sources such as coalbeds and shale gas formations. EPA and various state agencies are studying the impacts of hydraulic fracturing activities on drinking water and groundwater, and additional regulation of this practice is under consideration.

International treaties and institutions

32 International treaties

Is your country a contracting state to any international environmental treaties, or similar agreements?

The US is a party to many international environmental agreements, including various bilateral agreements (eg, the US–Canada Air Quality Agreement), regional agreements (eg, the North American Agreement on Environmental Cooperation between the United States, Canada and Mexico; the UNECE Convention on Long-Range Transboundary Air Pollution and several of its protocols, including the 1998 Protocol on Heavy Metals) and global multilateral environmental agreements (eg, the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, the 1973 CITES Treaty; the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, and the 1992 UN Framework Convention on Climate Change). The US State Department maintains a complete list of international agreements to which the US is a party (www.state.gov/s/l/treaty/treaties/2007).

The US is not yet a party to several significant multilateral environmental agreements, generally for lack of certain domestic authority for which new legislation would be required before the US could join. Treaties in this category include the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal; the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; and the 2001 Stockholm Convention on Persistent Organic Pollutants.

33 International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

With few exceptions, treaties are generally not given direct effect in US law. The US has generally implemented its treaty obligations under environmental agreements through statutes and regulations. In many cases, this domestic authority has pre-dated the US international obligations and US law and policy make no direct reference to treaties. In other cases, however, the US has enacted new legislation expressly to satisfy international obligations, and US policy under such laws is closely keyed to the developments under international agreements (eg, regulatory policy on ozone depleting substances and the Montreal Protocol). As a general matter, federal agencies that are responsible for developing, implementing and enforcing US environmental regulatory policy are conscious of US obligations under international agreements, as well as of developments under agreements to which the US is not yet a party.

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