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# 2010

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# United States

Donald J Patterson Jr and Holly Cannon

Beveridge & Diamond, PC

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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 stationery 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 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;
- 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
- Toxics Substances Control Act (TSCA) (1976): Regulation of certain toxic chemicals and products

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.

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### 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.

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### 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 also have adopted separate voluntary cleanup and brownfields redevelopment programmes that address soil and other media. See question 11 for more details.

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### 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.

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### 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 operating permits and comply with equipment standards and 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 lower for facilities that emit hazardous air pollutants or that are located in areas with poor air quality. Many new sources and modifications to existing sources will trigger a new source review process, which requires pre-construction permitting and may require pollution control equipment and emissions offsets. Mobile sources and fuels are also 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 in 2012 is pending in the US Congress, and is described in 'Update and Trends'.

In addition to this pending legislative action, a US Supreme Court decision in 2007 confirmed that EPA already has authority under the CAA to take regulatory action to address GHG emissions. In July 2008 EPA issued an Advance Notice of Proposed Rulemaking presenting information about the decision and soliciting public comment on analyses and policy alternatives regarding GHG effects and regulation under the CAA.

EPA also proposed a rule in March 2009 to require mandatory reporting of GHG emissions from large sources in the US and to establish a registry of that emission data. This rule would require suppliers of fossil fuels or industrial greenhouse gases, manufacturers of vehicles and engines, and facilities that emit 25,000 metric tons or more per year of GHG emissions to submit annual reports to EPA. The gases covered by the proposed rule expand upon those covered by the Kyoto Protocol; they are carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and other fluorinated gases including nitrogen trifluoride and hydrofluorinated ethers.

In the meantime, most states and many local governments have taken steps to establish GHG standards and emission reduction programmes, and several groups of states are developing regional CAT programmes. In 2008, the Regional Greenhouse Gas Initiative (RGGI), made up of most of the northeastern US states, conducted the first auctions of GHG allowances for its CAT programme, which applies only to 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, is developing an economy-wide CAT programme that is scheduled to go into effect in 2012. California is continuing to implement its ambitious AB 32 programme; in June 2009, EPA granted a waiver to the state enabling it to enforce its GHG emission standards for new motor vehicles.

**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 U.S.' are of a quality to be fishable and swimmable. 'Waters of the U.S.' 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 also are subject to permitting. Permits must contain the more stringent of (a) technology-based effluent limitations reflecting uniform national standards and (b) 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**

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

There are several categories of federal lands in the United States, 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 391 national parks, monuments, seashore sites, battlefields, and other recreational and cultural sites, and approximately 272

million acres of public rangelands. 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**

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 noises, odours and vibrations?

Noise, odors and vibrations are primarily regulated, if at all, at the state and/or local level. 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 property. 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, gasoline, tires, 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 program 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 labelling requirements. Manufacturing a new chemical substance (not on the TSCA Inventory) is prohibited unless and until EPA approves a pre-manufacture notification application for the substance, denies an application, or imposes restrictions on the new chemical's marketing, uses, labelling, etc. The Consumer Products Safety Improvement Act of 2008, implemented by the Consumer Products Safety Commission (CPSC), imposes new 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 also are 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; (iii) and potential liabilities associated with the generation and off-site disposal of wastes from the target's operations. The second and third categories are of particular concern because liability for onsite remediation and for historic off-site 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 off-site 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). A purchaser of contaminated real property will be liable for the remediation of such contamination, even if the purchaser had nothing to do with the cause. The purchaser 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.

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**Environmental assessment**


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**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.

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**Regulatory authorities**


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**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. 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, as well as an agency charged with 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 'overfilling' 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.

Separate air emission, water discharge, and 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.

**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 noncompliance through review of a regulated facility's records or an onsite inspection, under most circumstances agency personnel initially will discuss the alleged violations and compliance alternatives 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 noncompliance. 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 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 submission.

**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 even 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 or 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.

### Update and trends

The new US president (who entered office in January 2009) is the first president to call for a mandatory, economy-wide cap-and-trade programme to reduce GHG emissions, and legislation that would implement a CAT programme in 2012 is pending in the US Congress. It passed the US House of Representatives in June 2009 but still must clear the US Senate, where there is strong opposition. The administration hopes to have a CAT bill passed in time to use it as a basis for negotiations at the December 2009 international meeting in Copenhagen. However, even if adopted, it is likely that the law's emission reduction requirements will be less ambitious than those proposed by the European Union.

#### 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 insure 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.

### International treaties and institutions

#### 32 International treaties

Is your country a contracting state to any international environmental treaties, etc?

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 United States is a party (at [www.state.gov/s/l/treaty/treaties/2007](http://www.state.gov/s/l/treaty/treaties/2007)).

The United States 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 United States 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 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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