

PANORAMIC

ENVIRONMENT

USA



 LEXOLOGY

Environment

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LEGISLATION

Main environmental regulations**What are the main statutes and regulations relating to the environment?**

The [National Environmental Policy Act \(NEPA\)](#) is the umbrella procedural statute that requires federal agencies to consider the environmental impacts of their actions and involve the public.

Several substantive statutes are media-specific:

- the [Clean Air Act \(CAA\)](#) regulates air quality and emissions;
- the [Clean Water Act \(CWA\)](#) regulates water quality and discharges;
- the [Safe Drinking Water Act](#) establishes drinking water standards for tap water and underground injection rules;
- the [Resource Conservation and Recovery Act \(RCRA\)](#) regulates hazardous and solid waste management;
- the [Comprehensive Environmental Response, Compensation and Liability Act \(also known as Superfund or CERCLA\)](#) addresses remediation of legacy disposal sites and release reporting; and
- the [Oil Pollution Act](#) provides for oil spill prevention and response.

Other statutes are resource specific. The Endangered Species Act (ESA) protects listed endangered and threatened species and critical habitat. Other statutes protect certain species, including the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act and the Marine Mammal Protection Act.

Other statutes govern natural resource planning and development on federal lands onshore and on the Outer Continental Shelf, including:

- the Mineral Leasing Act;
- the Outer Continental Shelf Lands Act;
- the Federal Land Policy and Management Act;
- the Mining Law of 1872;
- the National Forest Management Act;
- the National Park Service Organic Act;
- the Wild and Scenic Rivers Act;
- the National Wildlife Refuge System Administration Act;
- the Rivers and Harbors Act;
- the Marine Protection, Research, and Sanctuaries Act (ie, Ocean Dumping Act); and
- the Coastal Zone Management Act.

Additional statutes cover certain products or wastes:

- the Toxic Substances Control Act (TSCA) regulates new and existing chemicals and products that contain these chemicals;

- the Pollution Prevention Act creates a national policy to reduce pollution at the source by changing production, operation, and raw materials;
- the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) regulates pesticides; and
- the Federal Food, Drug and Cosmetic Act regulates food, drugs and cosmetics.

Still more statutes focus on human health and safety:

- the Hazardous Materials Transportation Act (HMTA) regulates transportation of hazardous materials;
- the Occupational Safety and Health Act regulates hazards in the workplace; and
- the Emergency Planning and Community Right-to-Know Act provides emergency planning and notification for hazardous and toxic chemicals.

The US Environmental Protection Agency (EPA) offers high-level summaries and citations for key US environmental laws.

Nearly all of these statutes have implementing regulations issued and administered by federal agencies vested with jurisdiction. The federal and state governments share authority to administer some federal environmental programmes (eg, the CAA and the CWA). States also have their own, sometimes more stringent, environmental laws, such as groundwater protection schemes, additional recycling and extended producer responsibility requirements, and state equivalents of the NEPA. Counties, cities and other local government entities may have their own requirements as well.

Law stated - 26 September 2025

Integrated pollution prevention and control

Is there a system of integrated control of pollution?

There is no general system providing integrated pollution prevention and control. The EPA administers most of the national environmental statutes and regulations, but other federal agencies also have jurisdiction over federal lands, wildlife, or specific activity types. State and local authorities generally may impose additional requirements where not pre-empted by federal law. In some cases, the federal system is a delegated programme where states implement minimum federal standards but can impose more stringent requirements.

Law stated - 26 September 2025

Soil pollution

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

Superfund's remediation authorities extend to pollution of soil and other media. The EPA lists sites on the [National Priority List](#) based on a hazard ranking system. The EPA also maintains a list of hazardous substances that are subject to such authorities. Liability under the act and state laws is typically strict, joint and several, and retroactive, even to legacy contamination sites. Potentially responsible parties (PRPs) liable for remediation under Superfund include

entities that arrange or arranged 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 the 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. States also implement [brownfield and voluntary response](#) programmes aimed at remediating and reusing legacy contaminated soil sites. While Superfund covers soil pollution after the release of hazardous substances, the RCRA aims to prevent soil pollution in the first place by implementing a cradle-to-grave approach to hazardous waste management and monitoring, and also provides redress for releases that create an imminent and substantial endangerment to the environment.

Law stated - 26 September 2025

Regulation of waste

What types of waste are regulated and how?

The RCRA defines 'solid waste' as 'any garbage, refuse, sludge . . . and other discarded material'. Under that law, 'solid' wastes include solid, liquid, semisolid or contained gaseous material. Solid wastes classified as 'hazardous wastes' under Subtitle C of RCRA include:

- certain specifically listed wastes;
- wastes that fail generic characteristics of toxicity, reactivity, corrosivity or flammability;
- certain mixtures of hazardous wastes and other solid wastes, and residues from treatment of hazardous waste; and
- media (eg, soil and debris) that contain hazardous waste.

Some states have adopted additional provisions that expand the generic characteristics of hazardous waste or the list of wastes identified as hazardous in that state.

The RCRA creates a cradle-to-grave regulatory scheme, including detailed requirements for generators and transporters of hazardous wastes, as well as detailed design and operating standards for treatment, storage and disposal facilities, which generally require state or federal permits. The RCRA requires that certain hazardous wastes meet treatment standards (incineration, stabilisation) before landfill disposal. Certain treatment standards are numerical and others require the use of certain treatment technologies. 'Universal' wastes, including batteries, certain suspended or cancelled pesticides, aerosol cans, lamps and mercury-containing equipment (some states have expanded this list) are subject to streamlined hazardous waste storage, labelling and transportation requirements. Municipal solid wastes and medical and infectious wastes are generally subject to state transportation and disposal requirements. The Act also imposes record-keeping requirements on disposers of hazardous waste. For hazardous waste storage, depending on the size and type of facility, RCRA regulations may impose accumulation time limits and technical standards (eg, for containers, tanks, drip pads or containment buildings), as well as training requirements, air emission limitations and the development of contingency plans and emergency procedures. Under the HMTA, transporters of hazardous waste must obtain an EPA identification number and comply with the EPA's hazardous waste manifest system. Exemptions

exist for transporters of certain recycled or reclaimed hazardous wastes generated by small-quantity generators. Transporters must take certain actions in response to discharges or spills of hazardous waste. Transporters must also comply with applicable Department of Transportation regulations that apply to the transport of hazardous materials by rail, aircraft, water vessel or truck. These include record-keeping, training, manifest, labelling and packaging requirements. RCRA also restricts the export and import of hazardous waste.

In line with increasing efforts to regulate per- and polyfluoroalkyl substances (PFAS), in February 2024, the EPA proposed a rule to add nine PFAS to the list of 'hazardous constituents' under the RCRA. This marks the first time since 2005 that the EPA has considered listing a hazardous constituent. Notably, this rule would not list PFAS as 'hazardous waste' subject to the cradle-to-grave regulatory scheme. However, it would still bring PFAS into the RCRA corrective action programme, which imposes requirements on facility owners and operators for releases of hazardous wastes or constituents. If the rule is adopted, it may eventually lead to full hazardous waste regulations for certain PFAS wastes. The final rule has yet to be adopted, but EPA Administrator Lee Zeldin's April 28, 2025 announcement about PFAS suggests such a final rule may eventually be promulgated. Moreover, in April 2024, the EPA issued a final rule listing two PFAS (PFOA and PFOS), as 'hazardous substances' under Superfund. The RCRA and implementing the EPA regulations and guidance exempt certain recyclable materials (including some by-products) and recycling activities from its hazardous waste regulations, generally if specified conditions are met. Recycling standards under the RCRA range from full regulation to full exemption from regulation. Federal law does not mandate a circular economy or waste recycling in lieu of disposal. Under a growing number of state laws (especially in California), extended producer responsibility requirements (including various recycling targets and obligations to pay fees to support a Producer Responsibility Organization (PRO)) may apply for certain categories of products.

Law stated - 26 September 2025

Regulation of air emissions

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

The CAA regulates air emissions from stationary and mobile sources and obliges the government to regulate air pollutants it determines may endanger public welfare. One of the main provisions of the CAA authorises EPA to establish National Ambient Air Quality Standards (NAAQS). To date, the EPA has established NAAQS for six pollutants: particulate matter (coarse and fine), ozone, sulphur dioxide, nitrogen dioxide, carbon monoxide and lead. States must adopt state implementation plans (SIPs) to achieve the NAAQS and to control emissions of criteria and hazardous pollutants within their boundaries. The CAA also requires the EPA to regulate emissions of listed hazardous air pollutants (HAPs) and to address ozone-depleting substances, acid rain and regional haze.

Most facilities that produce air emissions are likely to be regulated by the CAA and must comply with federal and state requirements to meet or maintain the NAAQS. The act requires new or modified sources of air pollutants to obtain pre-construction approval. The pre-construction permit programme requires project proponents to demonstrate that emissions from the new or modified sources will not cause or contribute to an increase in air pollutants that would degrade air quality and require installation of certain levels of pollution

control equipment depending on the area's air quality. Following construction, new or modified sources must obtain operating permits, which require compliance with equipment standards (eg, best available pollution control equipment) and emissions limits. These standards and limits vary based on facility type and the nature of emissions. Permitting thresholds, emissions limits and equipment standards are generally more stringent for sources emitting HAPs or located in NAAQS non-attainment areas. For certain actions, federal agencies must also demonstrate general conformity or transportation conformity to approved SIPs, thereby ensuring that those actions will not create or worsen air quality violations under the NAAQS.

Although EPA issues permits in some circumstances, most permits are issued by state or local air pollution control agencies under their delegated SIP authority (with EPA oversight). Operating permits are generally required for larger sources and sources that are subject to new source performance standards, HAP standards and acid rain control requirements. Operating permits typically last for five years and include enforceable emissions standards and limitations (which vary by industry or source category), compliance schedules, and monitoring and reporting requirements.

Following a challenge from three states as well as several companies and trade associations, in June 2024 the Supreme Court granted a temporary stay of the EPA's 'Good Neighbour' air pollution rule. That rule would require 'upwind' states to implement air pollution control measures to limit pollution in states 'downwind' of them. In [Ohio v EPA](#), the Supreme Court reasoned that although the rule could improve air quality in 'downwind' states, it would unduly interfere with the ability of individual states to manage their own industries and citizens. Moreover, compliance with the rule would impose a significant monetary burden on the challengers. The case will now return to the DC Circuit for adjudication on the merits.

In [Oklahoma v EPA](#), the Supreme Court further restricted the scope of the 'Good Neighbour' rule by holding that states can contest EPA's decisions to disapprove 'good neighbour plans' in regional appellate courts rather in the DC Circuit Court of Appeals where nationally applicable rules are generally challenged. Further, as of June 2025, the Trump administration has stated their intention to repeal the plans altogether.

In August 2015, EPA introduced the Clean Power Plan (CPP) to set national standards to reduce carbon dioxide pollution from stationary power plants. In June 2019, the EPA formally withdrew the CPP and replaced it with the Affordable Clean Energy (ACE) rule. In June 2022, the Supreme Court reviewed the DC Circuit's decision to vacate the ACE rule, which would have opened the door for further regulatory action by the Biden administration on power plant greenhouse gas (GHG) emissions. In [West Virginia v EPA](#), the Supreme Court, relying on the 'major questions doctrine', concluded that Congress did not grant EPA the authority to devise emission caps based on a goal to shift power generation from coal to renewable energy and natural gas. The EPA thus exceeded its power by enacting the CPP. Congress must now provide clear direction to the EPA in its delegation of authority before the agency can regulate GHG emissions as attempted in the CPP. In April 2024, the EPA issued a final rule under the CAA that repealed the ACE rule. That same final rule also revised new source performance standards for GHG emissions from certain new and reconstructed fossil fuel-fired electric-generating units (EGUs), and finalised emission guidelines for GHG emissions from existing fossil fuel-fired steam-generating EGUs. In line with the Biden administration's commitment to addressing climate change and environmental justice, during the United Nations Climate Change Conference (COP27) in December 2023, the EPA announced a final CAA rule intended to reduce methane and other pollutants in the oil and

gas industry. The rule consists of new source performance standards regulating methane and volatile organic compound emissions as well as first-time emissions guidelines that direct state plans to address existing sources' methane emissions. Moreover, in April 2024, the EPA announced a suite of final rules intended to reduce air, water and land pollution from fossil fuel-fired power plants. Most notably, the rules include significant limits on coal-fired and new natural gas-fired power plants. The rules also consist of tightened mercury and air toxics standards, stronger limits on water pollution from power plants, and requirements for the safe management of coal ash. Many of these rules pertaining to power plants are now being reconsidered by the EPA as of 12 March 2025 as a part of Trump's deregulation policy goal.

Beyond stationary sources, the EPA has broad authority over mobile sources including aircraft, on-road vehicles and non-road engines and equipment. It sets emission standards for vehicles, imposes testing and certification for engines, and controls fuel formulations and additives. Passenger cars and light-duty trucks must meet tailpipe emission standards for various air pollutants and GHGs. In recent years, the unique ability of California to set stricter vehicle emissions standards, which other states may then adopt in lieu of federal standards, has been in flux. In September 2019, the EPA formally revoked California's unique ability to set stricter vehicle emissions standards, which are followed by about a dozen other states, but then reinstated California's authority in March 2022. In December 2021, following a re-evaluation of standards previously set, the EPA issued new stricter standards for tailpipe carbon dioxide emissions for passenger cars and light-duty trucks for model years 2023 to 2026. The Department of Transportation followed by strengthening corporate average fuel economy standards in April 2022 for model year 2026. In March 2021, the EPA issued a final 'phase 3' rule that created stricter GHG emission standards for heavy-duty vocational vehicles, set to apply in model year 2027. However, in June 2025, Congress purported to adopt three Congressional Review Act resolutions to invalidate stricter California standards for certain emissions and compelling zero-emission truck sales; those actions are the subject of litigation.

In addition, for aircraft, in August 2016, the EPA finalised a finding that GHG emissions from certain classes of aircraft endanger human health and welfare. On 11 January 2021, the EPA issued the first-ever CAA GHG emission standards for aircraft. Those standards apply to manufacturers of new aircraft and new aircraft engines, with compliance determined as part of the Federal Aviation Administration's airworthiness certification process. In November 2021, the Federal Aviation Administration published the US Aviation Climate Action Plan, which outlines the government's approach to achieving net-zero emissions by 2050. The plan relies on more efficient aircraft and engine technologies, production and use of sustainable aviation fuels, advancements in airport operations, international cooperation, and support for climate science research. Several states, including Florida and Tennessee, have begun to issue bans on emitting any chemicals intentionally into the atmosphere for the express purpose of affecting temperature, weather or sunlight.

The US currently has no federal law setting energy efficiency standards or requiring energy audits for buildings. The US Department of Energy (DOE) establishes and implements minimum energy conservation standards for residential, commercial and industrial equipment and appliances used in buildings under the Energy Policy and Conservation Act of 1975, as amended by the National Appliance Energy Conservation Act, the Energy Policy Acts of 1992 and 2005 and the Energy Independence and Security Act of 2007. On 12 May 2025, the DOE published several proposed rules that would roll back some of their

energy efficiency regulations. As part of the Inflation Reduction Act of 2022, the government offers incentives for energy efficiency such as 179D Commercial Building Energy-Efficiency Tax Deduction. States and localities have promulgated green building standards, which, generally, are voluntary, and are exploring other means to make buildings more energy efficient. However, as of 4 July 2025, President Trump signed the One Big Beautiful Bill Act into law which repeals portions of the tax credits provided under the Inflation Reduction Act of 2022.

Additionally, in March 2025, EPA Administrator Lee Zeldin issued a policy in which corporations can 'request exemptions' from CAA standards based on 'national security' or 'lack of available technology' justifications. Presently, coal power plants across 23 states have made use of this exemption and a litigation has ensued.

On 1 August 2025, the EPA proposed rescinding the 'endangerment finding' under the CAA, which has formed the backbone of regulation of certain greenhouse gas emissions since 2009 and was upheld by the Supreme Court. This is part of a broader agenda to undo climate regulations and is almost certain to trigger additional litigation.

Law stated - 26 September 2025

Protection of fresh water and seawater

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

The CWA requires a permit for any person or entity to discharge either pollutants or dredged or fill material to waters of the US. The EPA oversees the former; the US Army Corps of Engineers oversees the latter (subject to EPA veto). In [June 2023](#), in its *Sackett v EPA* decision, the Supreme Court substantially narrowed the definition of 'waters of the US', a decades-long debate and the subject of numerous agency rulemakings and court decisions. In particular, the Supreme Court held that waters of the US include jurisdictional wetlands with a continuous surface connection to relatively permanent bodies of water. In August 2023, the Corps and the EPA issued a final rule implementing the revised definition of 'waters of the US' in *Sackett*. That latest rule and prior rules remain in litigation. On 12 March 2025, the EPA and the Corps issued post-*Sackett* guidance and commenced a new rulemaking effort.

The issue of groundwater discharges has also caught the attention of the Supreme Court. In March 2020, in [County of Maui, Hawaii v Hawaii Wildlife Fund](#), the Supreme Court established the 'functional equivalent' test to determine if facilities need a permit to discharge pollutants to a water of the US through groundwater. The EPA is in the process of issuing its interpretation of the test in *Maui*.

Individual states maintain their own programmes regulating these discharges to surface waters, and may be delegated authority to implement the act within their borders. Industrial and municipal 'discharges' of wastewater and designated discharges of storm water to these waters that pass through a 'point source' and 'discharges' of fill material are subject to permitting. Permits must contain the more stringent of technology-based effluent limitations reflecting uniform national standards or effluent limitations designed to protect the water quality of the specific water body to which the discharge is made. States also issue water quality certifications under section 401 of the CWA, which remains the subject of ongoing regulatory changes and litigation aimed to balance state interests

and expeditious permitting. Although the Trump administration substantially limited state authority under Section 401, the Biden administration largely restored it. On 1 July 2025, the Trump administration began a process to revisit section 401 implementation. The EPA also regulates the transportation and deposit of waste by a vessel within coastal waters through the Shore Protection Act and Marine Protection, Research and Sanctuaries Act (also known as the Ocean Dumping Act). In addition, the EPA sets standards for different contaminants in drinking water through the Safe Drinking Water Act and monitors states, local authorities and water suppliers who enforce those standards. State law governs the extraction of water for consumptive use. In April 2024, the EPA finalised the first-ever National Drinking Water Standard for six PFAS. The Biden administration also provided US\$10 billion in funding through the [Infrastructure Investment and Jobs Act of 2021 \(Bipartisan Infrastructure Law\)](#) to assist states, territories and owners of private wells in addressing PFAS contamination. The Make America Healthy Again (MAHA) Commission reported on 28 May 2025, that the EPA is evaluating their position on regulating the use of fluoride in drinking water, which could pose future regulations surrounding drinking water.

On 4 March 2025, in *City and County of San Francisco v EPA*, the Supreme Court struck down EPA's to impose generic prohibitions on CWA section 402 discharge permits that do not have clearly articulated limits to which discharges must conform.

Law stated - 26 September 2025

Protection of natural spaces and landscapes

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

Several categories of federally owned and managed lands are set aside for conservation and recreational purposes and are under various agencies' jurisdiction. Such designations are usually made by Congress pursuant to an organic statute and a site-specific statute, with the exception of the presidential designations of national monuments under the Antiquities Act. Other categories of protected areas include national parks, national wildlife refuges, national forests, wild and scenic rivers, and wilderness areas. Each type of designation entails balancing predominant or multiple uses. For example, the ESA requires protection for designated critical habitat areas, while the Land and Water Conservation Fund (LWCF) invests earnings from offshore oil and gas leasing to conserve parks, wildlife refuges, forests, open spaces, trails and wildlife habitat. Under section 6(f) of the LWCF Act, projects supported by LWCF funds that convert areas to non-recreational uses property generally must receive approval from the US National Park Service and provide replacement lands or other mitigation.

The Department of the Interior manages most public lands, including both onshore and the 3.2 billion acres of the Outer Continental Shelf. The Department of Agriculture manages national forests. Designated wilderness areas receive the most protection. Individual states and localities also have systems of protected areas. In recent years, the Department of the Interior has issued several new rules intended to prioritise conservation and curtail certain energy development of federally managed lands. For example, in May 2024, the Bureau of Land Management finalised a Conservation and Land Health rule that includes new authority to issue conservation leases. On 11 September 2025, the Trump administration proposed to rescind that rule. That rule and others also face litigation. The future of this trajectory

remains uncertain and subject to the policy priorities of the Executive Branch, as the Trump administration attempts to balance conservation (such as the 3 July 2025 creation of the Make America Beautiful Again (MABA) Commission) with aggressive energy development on public lands.

Transportation (road, transit or rail) projects must additionally comply with section 4(f) of the US Department of Transportation Act of 1966. This section precludes the use of parks, recreation lands, wildlife refuges and historic sites for transportation projects unless there is no feasible and prudent avoidance alternative. Additionally, the project must include all possible planning to minimise harm to section 4(f) properties or demonstrate that the project only has a minimis impact on section 4(f) properties.

Law stated - 26 September 2025

Protection of flora and fauna species

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

The ESA provides for the protection and recovery of listed endangered and threatened plants and animals and the habitats upon which they depend. Absent a 'no effect' determination, each federal agency must engage in consultation to ensure that its actions are not likely to jeopardise the continued existence of the species or result in destruction or adverse modification of the species' designated critical habitat. 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 or destroying habitat. Some states have enacted legislation to protect endangered and threatened plants and animals (in addition to the federal ESA list) within those states. The Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act, and their respective regulations, also protect against certain actions, including 'taking' migratory birds and eagles.

The US Fish and Wildlife Service (FWS) and National Marine Fisheries Service (the Services) remain engaged in review and potential further revision of regulations implementing the ESA, which in recent years have vacillated between fewer and greater protections. In 2016, the Services amended their rules to broaden key ESA terms and make it harder to delist species. In August 2019, the Services sought to reform and narrow ESA implementation, including the rules for listing species, designating critical habitat, conducting interagency consultation and removing the automatic extension of take prohibitions to listed threatened species under the jurisdiction of the US Fish and Wildlife Service. Separately, the Services in June 2022 reversed a December 2020 rule that had narrowed the definition of 'habitat' for purposes of designating critical habitat. In May 2024, the Services issued three final rules that primarily undo the 2019 regulatory amendments. Like their predecessors, these latest rules have generated litigation. In April 2025, the Services proposed to remove the regulatory definition of 'harm' implementing ESA section 9 to exempt impacts on habitat. On 23 April 2025, based on a 'national energy emergency' of indefinite length declared by the President, the Department of the Interior announced 'alternative procedures' for informal ESA section 7 consultations for qualifying energy projects. On 9 June 2025, the FWS issued a request for information seeking to simplify the ESA section 10(a) permitting process which provides incidental take protection for certain non-federal activities.

Beyond the ESA, on 4 October 2021, the FWS reversed a January 2021 rule that had excluded incidental take from prohibition under the Migratory Bird Treaty Act, thereby again subjecting incidental take of migratory birds to prosecutorial discretion for enforcement. That same proposed rule included a new broader definition of incidental take and creation of an incidental take permitting programme for migratory birds. On 21 April 2025, the FWS withdrew that proposal. In February 2024, the FWS issued a final rule that created general permits under the Bald and Golden Eagle Protection Act to authorise incidental take of bald and golden eagles associated with wind energy, power lines and certain other projects.

Law stated - 26 September 2025

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 local or state level. Many states have noise pollution programmes, which vary widely. Local zoning laws and allowed activities also vary widely. Under the CAA, Noise Control Act of 1972, and Quiet Communities Act of 1977, the EPA retains authority to investigate, study and respond to questions about noise pollution and adverse health impacts. Federal noise regulations cover standards for transportation equipment, air and motor carriers, low noise emission products and construction equipment, and are enforced by the EPA or other designated federal or state and local agencies. Workplace exposure to noise, odours and vibrations is regulated by the US Occupational Safety and Health Administration. Additionally, the aviation industry may soon see new noise regulations by the beginning of 2026 based on a ['Leading the World in Supersonic Flight'](#) executive order that encourages the FAA to establish aircraft noise certifications and acceptable noise thresholds for takeoff, landing and supersonic operations. Under common law tort principles, private parties may bring nuisance actions for excessive noise, odours and vibrations. State agencies also are dedicating increasing attention to these issues via environmental justice initiatives. Federal agencies used to utilise environmental justice initiatives as it pertained to these issues, but the Trump administration has since revoked many key environmental justice executive orders, including via the 'Ending Illegal Discrimination and Restoring Merit-Based Opportunity' executive order that ended the Clinton-era executive order [12898](#), which systematically directed federal agencies to consider environmental justice in their activities.

Law stated - 26 September 2025

Liability for damage to the environment

Is there a general regime on liability for environmental damage?

There is no US generalised regime for environmental damages. Statutes, regulations and common law can impose various types of liability, including administrative, civil and criminal. Courts in turn establish precedent for liability in cases arising under various environmental laws. Alleged violators may face government administrative actions, civil suits or citizen suits. Only the government can prosecute criminal liability in court.

The government generally follows proportional enforcement. Minor offences may trigger administrative or civil sanctions; more serious and intentional violations trigger more severe sanctions or even criminal charges. The government's burden of proof is highest in criminal cases. Some programmes, like Superfund and the Oil Pollution Act, impose strict liability based on party status. The RCRA authorises the government or private parties to seek relief for 'imminent and substantial' endangerment to the environment.

Law stated - 26 September 2025

Environmental taxes

Is there any type of environmental tax?

Most US environmental programmes are regulation based, not tax based. Some environmental tax programmes do exist. For example, the Oil Pollution Act established a federal trust fund to clean up oil spills, financed by a per-barrel tax collected from the oil industry. An underground storage tank trust fund is funded by taxes on certain motor fuels. A federal tax also applies to use or import ozone-depleting chemicals. The Surface Mine Control and Reclamation Act authorises a reclamation programme for abandoned mine land, which is funded by a coal tax. Environmental taxes are more prevalent on the state and local levels, including taxes relating to waste and battery disposal, chemicals, petroleum, tyres, air emissions, oil spill response, litter control and water quality.

Law stated - 26 September 2025

Environmental reporting

Are there any notable environmental reporting requirements (eg, regarding emissions, energy consumption or related environmental, social and governance (ESG) reporting obligations)?

Since approximately 2010, the EPA has required certain large emitters (eg, fuel and industrial gas suppliers, carbon dioxide injection sites) to annually report their GHG emissions data using specified methodologies and the EPA's electronic reporting tool (see the EPA's Greenhouse Gas Reporting Program, codified at 40 CFR Part 98). Following the EPA's multi-step verification process, the annual data is then made available to the public. On 15 September 2025, the EPA proposed to end this programme.

There is currently no general system for comprehensive ESG reporting in the US, although more targeted reporting requirements have been established within the social dimension of ESG, such as the Securities and Exchange Commission's (SEC) conflict minerals rule, the SEC's rule on disclosures relating to human capital management and the State of California's Transparency in Supply Chains Act. To date, most companies voluntarily reporting ESG information have been driven by customer, investor, NGO and other stakeholder expectations. However, the DOE has recently closed comments to a proposed rule that would end that programme. The US currently seems unlikely to transition to mandatory ESG reporting obligations. In March 2024, the SEC adopted new disclosure and reporting requirements for investors concerning registered funds' and advisers' incorporation of ESG factors. The acting SEC Chairman issued a statement in February 2025 questioning what

the next steps are for the SEC towards actually adopting the rule and whether the rule is necessary or permissible under the Commission's delegated authority. This follows an executive order on 8 April 2025 for the Attorney General to identify all ESG initiatives and take action to stop all such ESG activities that hinder domestic energy resource activities. These developments may spur widespread efforts to revisit or rewrite company ESG policies.

Meanwhile, Congress remains divided on ESG issues and legislation has remained elusive. For example, in 2021, Congress considered legislation that would require disclosures relating to climate, ESG, political spending, tax havens and offshoring. By contrast, in March 2023, Congress voted to overturn the US Department of Labor's ESG rule that enabled fiduciaries to consider ESG factors when selecting investments for retirement plans. President Biden vetoed the resolution. Certain states have pursued similar actions to limit ESG considerations in investing.

Law stated - 26 September 2025

Government policy

How would you describe the general government policy for environmental issues? How are environmental policy objectives influencing the legislative agenda?

Environmental policy is often a function of the presidential administration in power, which changes every four to eight years. Current environmental policy under the Trump administration is largely focused on deregulation and encouraging domestic energy production, particularly fossil fuels. There also are concerted legislative and Trump administration efforts to undo the overall expansion in environmental policy of the prior Biden administration, including on climate change, renewable energy, the NEPA review process and tax benefits under the IRA. These environmental policy objectives have manifested earliest in a series of executive orders issued as early as day one on 20 January 2025., Executive orders declared the US to be in a national energy emergency and urged the expansion of domestic production of energy. Subsequent actions by the Department of the Interior and other agencies have since invoked this declared emergency to apply streamlined review and permitting procedures to certain energy projects. At the same time, the Trump administration has taken several actions to stop or deter wind and solar energy projects. The Council on Environmental Quality (CEQ) and other federal agencies have also largely revoked their regulations implementing NEPA, in favour of guidance and handbooks. The Trump administration has also prioritised shrinking and consolidation of environmental agencies and federal employee staffing across the government. Whether this approach will improve application and consistency in agency decision-making is to be determined.

On the legislative front, Congress has prioritised the Trump administration's stated objectives. Several environmental objectives that cannot be achieved via bipartisan legislation have been pursued via the budget reconciliation process, which is exempt from the 60-vote supermajority requirement in the Senate to overcome a filibuster. Most recently, the One Big Beautiful Bill Act (OBBBA), among other things, repealed many climate change-based policies and tax credits under the [Inflation Reduction Act of 2022](#), including for electric vehicles and renewable energy. It also resumed semi-annual leasing of the Outer Continental Shelf for oil and gas leasing. The [Fiscal Responsibility Act of 2023 \(FRA\)](#), in relevant part, modified and expedited the NEPA process, which the OBBBA further expedited

for certain projects that pay federal agencies 110 percent of the cost to prepare or oversee preparation of NEPA documents.. Congress continues to consider various bills to further reform and expedite federal environmental permitting.

Law stated - 26 September 2025

HAZARDOUS ACTIVITIES AND SUBSTANCES

Regulation of hazardous activities

Are there specific rules governing hazardous activities?

See the Resource Conservation and Recovery Act regarding the generation, treatment, storage, disposal and management of hazardous wastes; the Hazardous Materials Transportation Act for transport and handling of hazardous materials; the Comprehensive Environmental Response, Compensation and Liability Act for release of hazardous substances; the Toxic Substances Control Act (TSCA) for production, importation, use, and disposal of specific chemicals; and the 1970 Occupational Safety and Health Act (OSHA) for worker safety at facilities. The OSHA also establishes 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 from exposure to various air contaminants, asbestos, and other substances.

Law stated - 26 September 2025

Regulation of hazardous products and substances

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

Under TSCA, reporting, record-keeping and other requirements may apply to manufacturers (including importers), processors, distributors and users of chemical substances. Manufacturing a non-exempt new chemical substance (not on the inventory under the Act) is prohibited unless and until the Environmental Protection Agency (EPA) makes an affirmative finding either that a chemical is not likely to present an unreasonable risk or that a manufacturer may begin subject to a compliance order imposing restrictions on the new chemical. Designated 'significant' new uses of approximately 2,800 chemicals are subject to similar notification and review requirements.

Following amendments to the act passed in 2016, EPA also has authority to:

- prioritise chemicals for in-depth review;
- conduct risk evaluations of high-priority chemicals; and
- regulate those chemicals found to present an unreasonable risk under the conditions of use.

The EPA further may issue either orders or rules requiring testing by manufacturers and processors. For new chemicals (ie, not in the inventory), the EPA must now make affirmative findings (eg, whether a chemical is likely to present an unreasonable risk under the conditions of use) with an order to follow if the 'likely to present' finding is made. EPA actions may

pre-empt certain state restrictions on chemicals. Based on chemical manufacturer, importer and processor submissions, the EPA updates its inventory which identifies those chemical substances that are considered to be active. Pursuant to the 2016 statutory amendments to the act, in December 2023, the EPA initiated the prioritisation process for acetaldehyde, acrylonitrile, benzenamine (aniline), vinyl chloride and MBOCA, which makes these chemicals candidates for high-priority designation. In October 2024, the EPA finalised changes to the existing regulations governing testing, risk evaluation, reporting, and significant new uses of chemical substances under TSCA to align these regulations with revisions to OSHA's Hazard Communications Standard.

The Consumer Product Safety Improvement Act 2008, implemented by the Consumer Product Safety Commission (CPSC), limits the levels of lead, phthalates and certain chemicals allowed in children's products. The CPSC also administers the Federal Hazardous Substances Act, which requires precautionary labelling to alert consumers to certain products' potential hazards. Moreover, the Federal Trade Commission has established 'green guides' for environmental marketing claims. States additionally have imposed requirements to regulate and restrict the sale of certain products containing specified hazardous substances.

Many of these regulations for chemical products may be subject to change during the current administration. On 28 May 2025, the Make America Healthy Again (MAHA) Commission submitted an assessment that pushes for further policy action to regulate several items to protect the health of children in the US – PFAS, microplastics, fluoride, electromagnetic radiation, phthalates, bisphenols and pesticides. On 9 September 2025, the MAHA Commission issued a strategy with more than 120 initiatives.

Law stated - 26 September 2025

Industrial accidents

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

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

The Emergency Planning and Community Right-to-Know Act requires facilities to report chemical storage and release information, and also requires state and local governments to undertake emergency planning activities. The EPA, in October 2024, proposed a new rule to include 16 individual PFAS and 15 categories of PFAS to the Toxic Release Inventory (TRI) under that Act. In addition, under the CAA, facilities that produce, handle, process, distribute or store certain chemicals must prepare and submit a risk management plan to the EPA. Certain facilities are also required to prepare, develop and implement oil spill prevention, control and countermeasure plans.

Law stated - 26 September 2025

ENVIRONMENTAL ASPECTS IN TRANSACTIONS AND PUBLIC PROCUREMENT

Environmental aspects in M&A transactions

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

Purchasers should:

- check the target facilities' regulatory compliance;
- conduct 'all appropriate inquiries' including evaluating the facilities' environmental conditions and potential liability and costs for onsite remediation; and
- evaluate potential liabilities associated with the current and historic generation and offsite disposal of wastes from the target's operations.

A share purchaser generally acquires all the corporate target's assets and liabilities, including the predecessor's environmental liabilities. An asset purchaser 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.

The Trump administration has signalled a desire to reduce federal oversight, potentially making M&A transactions easier for corporation. At the same time, it has also signalled a protectionist stance, including on energy and resource development, which could affect transactions involving foreign-based entities.

Law stated - 26 September 2025

Environmental aspects in other transactions

What are the main environmental aspects to consider 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 government enforcement authorities can choose to seek recourse against 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, often are not discharged in the bankruptcy.

Law stated - 26 September 2025

Environmental aspects in public procurement

Is environmental protection taken into consideration by public procurement regulations?

Federal regulations require the US government to take into account certain environmentally preferable products in the procurement process. Some state and local governments also have procurement policies that favour environmentally preferable products. Though not procurement-based, agencies have included increasingly stringent environmental conditions (eg, community benefit plans) as conditions of awarding federal financial assistance under recent legislation encouraging certain infrastructure development. Moreover, certain environmental violations may result in a company being suspended or debarred from doing business with the US, state or local government.

On 16 April 2025, the White House previewed an overhaul of the federal procurement policy 'in order to increase competition and efficiency while decreasing costs'. In the statement, the White House signalled that it would be rewriting Federal Acquisition Regulations (FAR) in order to lower compliance costs and reduce regulatory buildup. While the statement did not explicitly mention any changes to environmental aspects in the FAR, it is an area to watch due to the Administration's broader goals of environmental deregulation. In addition, the Administration has aggressively cancelled and clawed back previously approved federal funding for various projects, including based on previously agreed environmental objectives and conditions.

Law stated - 26 September 2025

ENVIRONMENTAL ASSESSMENT

Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

The National Environmental Policy Act (NEPA) requires environmental review of most discretionary federal agency actions, including approving, financing, assisting or conducting plans, projects or programmes, whether regional or site-specific. However, the NEPA does not restrict any industrial activity or mandate particular environmental outcomes. Many NEPA documents address the federal government's natural resource management decisions. Certain actions are exempt from the NEPA, such as ministerial agency actions or where potentially duplicative environmental reviews are required. In some 'small handles' situations where only a small component or minor approval involves a federal nexus, the NEPA might not apply to the larger project. Certain states have laws analogous to the NEPA, which vary significantly.

Between 1978 and 2025, the CEQ had binding federal government-wide regulations implementing NEPA. Following court decisions finding that CEQ has no regulatory authority, and in furtherance of Trump administration directives such as Executive Order 14514 'Unleashing American Energy', on 19 February 2025, the CEQ issued an 'Interim Final Rule' rescinding its regulations, effective 11 April 2025. Subsequently, multiple agencies have issued interim final rules rescinding most of their NEPA regulations and have instead issued guidance. Prior to that, Congress codified several components of the CEQ's regulations in the 2023 Fiscal Responsibility Act, including by clearly allowing applicants to prepare draft NEPA documents, imposing hard time and page limits on studies, requiring the

designation of a lead agency and limiting analysis to those environmental impacts that are reasonably foreseeable. On 23 April 2025, based on a 'national energy emergency' of indefinite length declared by the President, the Department of the Interior announced 'alternative arrangements for NEPA compliance' for qualifying energy projects purporting to complete NEPA reviews in 14 to 28 days. On 29 May 2025, the US Supreme Court's decision in *Seven County Infrastructure Coalition v Eagle County* narrowed the scope of judicial review and expanded deference to agencies' NEPA reviews.

Law stated - 26 September 2025

Environmental assessment process

What are the main steps of the environmental assessment process?

The NEPA requires an environmental impact statement (EIS) for 'proposals for... major federal actions significantly affecting the quality of the human environment.' A less detailed environmental assessment (EA) may suffice for a federal agency action with insignificant or unclear impacts. Finally, categorical exclusions (CEs) apply to categories of agency actions that do not significantly affect the environment individually or cumulatively. An agency can perform a more detailed review under the NEPA than legally required and is guided by agency-specific regulations implementing the NEPA.

The lead federal agency is responsible for the NEPA review and may invite assistance by cooperating or participating with federal, state, tribal and local agencies with jurisdiction or special expertise. The lead agency may also hire and supervise third-party consultants, typically funded by the project proponent, to prepare the NEPA analysis. For an EIS, and sometimes an EA, the lead agency will publish a notice of intent for the proposed action, conduct scoping of affected resources or values, prepare a draft analysis and then finalise its analysis and decision. The project proponent and public may submit information and comments during this process, including typically a minimum 45-day comment period on the draft analysis. The adequacy of the final impact statement may be challenged in court. There is increasing legislative and regulatory focus on facilitating and expediting the NEPA reviews, including by integrating the NEPA with early planning efforts and other environmental requirements for a given project. As described above, however, those rules remain somewhat in flux as of this writing.

Law stated - 26 September 2025

REGULATORY AUTHORITIES

Regulatory authorities

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

The Environmental Protection Agency (EPA) implements most national environmental statutes. The Department of the Interior and the US Forest Service implement a variety of laws addressing environmental review, wildlife and cultural and historic resources. The Clean Water Act (CWA) wetlands fill permits are issued by the US Army Corps of Engineers with EPA oversight. The US Department of Justice litigates cases arising under federal environmental

and natural resources laws. State agencies issue most operations permits pursuant to authority delegated by the EPA, and also share enforcement authority. States generally take the lead under the Clean Air Act (CAA), CWA and the Resource Conservation and Recovery Act on inspections and enforcement, with the EPA retaining significant 'overfiling' enforcement authority with regard to violations of these statutes at individual facilities. In other areas (eg, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act and the Emergency Planning and Community Right-to-Know Act), the EPA generally takes the lead on enforcement.

Law stated - 26 September 2025

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 will initially 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.

Environmental agencies also have the power to initiate criminal investigations, which are generally brought when 'serious' environmental violations (which pose actual environmental harm or substantial risks of harm) are committed 'knowingly' or 'intentionally'. These criminal charges can be brought against the company, culpable or responsible individuals or both. If criminal charges are brought against individuals in the federal system, the risks of an active prison sentence are real. With regard to companies, apart from substantial fines, the biggest adverse impact can arise from suspension or debarment from public contracting, which can also spill over into contractual bars imposed by the compliance requirements of larger corporations, which prohibit them from using vendors with corporate criminal records.

Law stated - 26 September 2025

Administrative decisions

What is the procedure for making administrative decisions?

Most administrative decision-making processes are supposed to be open and allow for participation by interested parties and the general public. The procedural aspects of administrative decision-making vary based on 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 resemble a formal trial. More informal proceedings are decided based on written submissions. Although procedures vary, the parties typically may use any type of evidence they deem relevant in administrative proceedings. There also are means to seal confidential information if applicable. Any subsequent court challenge to a final agency action is typically based on and limited to the same administrative record as before the agency. The current Administration, in the name of efficiency and other factors, has placed less of a priority on public involvement and pursued a large number of interim final rules and decisions with immediate effect.

Law stated - 26 September 2025

Sanctions and remedies

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

Federal and state agencies may pursue injunctive relief and require the abatement or cessation of permit violations or environmental harm. Remedial steps may include installing equipment to control emissions, ceasing certain activities or revoking a permit or shutting down a facility. Many environmental statutes also authorise civil and criminal penalties, often calculated on a per-day, per-violation basis. Agencies may – and sometimes must – issue warnings or notices of violations before taking more severe enforcement actions. An agency typically may pursue an administrative enforcement action or sue the violator in federal court.

Law stated - 26 September 2025

Appeal of regulators' decisions

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

Nearly all formal administrative decisions from environmental agencies can be appealed by the recipient. Appeals can be based on factual findings and legal conclusions and can also challenge the extent of the remedy imposed by the decision-maker. Administrative appeal procedures differ among agencies, including potential proceedings before an administrative law judge or an agency appeals board. These appeal procedures may or may not be mandatory to exhaust of administrative remedies before proceeding to court, depending on the applicable statute and regulations and whether the challenged decision has immediate effect. A final agency action may be appealed to a US district court, or in some instances directly to a US court of appeals. These cases typically proceed based on governing law and the administrative record filed by the agency, and generally do not involve discovery or trial. Judicial review follows the Federal Rules of Civil Procedure, the Federal Rules of Appellate Procedure, and individual courts' local rules.

Law stated - 26 September 2025

JUDICIAL PROCEEDINGS

Judicial proceedings

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

Both. Most violations trigger administrative or civil enforcement. In addition, a party may be prosecuted in a criminal case if that party has committed a knowing violation of the law or a permit (or in some cases, even a negligent violation). Civil regulators and criminal prosecutors have substantial discretion about whether and which charges to bring in response to environmental violations, but typically seek remedies commensurate with the underlying offence. Since the consequences associated with criminal charges are more severe, US law imposes a higher burden of proof for crimes (eg, 'beyond a reasonable doubt') as opposed to civil violations (eg, 'preponderance of the evidence' or 'more probable than not'). A party challenging a federal agency action on environmental grounds may bring a civil case in a proper federal district court or a specific (eg, appellate) court if the relevant statute so directs.

Under the Trump administration, environmental law proceedings may increasingly take place in civil rather than criminal court. On 9 May 2025, [Executive Order No. 14294](#), 'Fighting Overcriminalization in Federal Regulations', ordered federal agencies to explicitly describe the conduct subject to criminal enforcement and took aim at strict liability criminal offences, describing them as 'absurd and unjust'. To that end, it directs federal agencies to assess whether they can adopt a background *mens rea* standard for all existing regulations. This and other actions driven by deregulation policies may narrow criminal enforcement of environmental regulations, with civil enforcement potentially filling the gap.

Law stated - 26 September 2025

Powers of courts

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

In civil cases brought by governmental entities or citizen plaintiffs to enforce environmental laws, courts are generally authorised to require violators of environmental legal requirements to pay penalties and to undertake injunctive relief to abate the violation or address the environmental impacts of the violation. In a criminal case, individual defendants who plead guilty or are convicted at trial can generally be ordered to pay a higher fine and serve time in prison. The primary factors that the US courts consider in imposing such a sentence include:

- the level of harm or danger imposed;
- the degree of the violations;
- the duration of the violations; and
- whether the violations required a substantial clean-up.

Under Federal Rule of Civil Procedure 65 and similar court rules and case law, courts may also grant a preliminary injunction or other interim relief to, for example, stay a challenged agency action or prevent a project from going forward during the litigation. An 11 March 2025 Presidential Memorandum directs the US Department of Justice to aggressively pursue

plaintiffs' posting of security for preliminary injunctive relief, which security otherwise is often waived or nominal.

Rulings of the Supreme Court, in the 2024 and 2025 terms, have diminished the power of agencies and increased the power of courts in resolving alleged violations of environmental law by agencies or by regulated entities. First, [Loper Bright Enterprises v Raimondo](#) overruled the Supreme Court's longstanding *Chevron* standard, under which courts had generally deferred to reasonable agency interpretations of ambiguous provisions in their governing statutes. Second, [Corner Post, Inc. v Board of Governors of the Federal Reserve System](#) may enable facial challenges to longstanding regulations by holding that the general six-year statute of limitations does not run until the specific plaintiff is harmed. Third, in [Securities and Exchange Commission v Jarkesy](#), the Supreme Court curtailed at least one agency's authority to issue penalties without a court jury trial. And on 27 June 2025, in *Trump v CASA*, the Supreme Court generally limited the scope of injunctive relief that lower courts may order, thereby curtailing the increasing trend of universal or nationwide injunctions against agency actions found to be unlawful.

Law stated - 26 September 2025

Civil claims

Are civil claims allowed regarding infringements of environmental law?

Certain environmental statutes (eg, the US Clean Air Act (CAA), the Clean Water Act and the Resource Conservation and Recovery Act) 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. The Administrative Procedure Act also generally enables citizen plaintiffs to file civil lawsuits challenging final agency actions, or omissions in some circumstances, as arbitrary and capricious. The Act also permits lawsuits for a federal agency's failure to comply with procedural or substantive requirements of other laws.

Law stated - 26 September 2025

Defences and indemnities

What defences or indemnities are available?

In civil cases, potential defences frequently include:

- statutes of limitations (up to five years is common);
- ambiguity of statutory or regulatory language;
- compliance with a valid permit;
- factual defences; and
- limited statutory defences.

In criminal cases, additional defences often may include:

- lack of knowledge;
- the government's failure to meet its heightened burden of proof; and
- other constitutional arguments unique to criminal cases (eg, lack of fair notice or void for vagueness).

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 such indemnities do not shield the violator from liability to the government. In Superfund litigation, in which multiple parties can be liable, courts have generally held that liability is strict and joint and several (subject to potential 'divisibility' defences).

Law stated - 26 September 2025

Directors' or officers' defences

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

Routine environmental violations generally do not create officer and director liability. However, some federal environmental statutes, including the CAA, specifically state that an 'operator' or 'responsible corporate officer' can include 'any person who is senior management personnel or a corporate officer.' In addition, a number of reports submitted to the US Environmental Protection Agency and state agencies are required to include formal certifications (under oath) with regard to the accuracy of the information contained therein, which can provide the basis for claims against corporate officers.

More often, various theories under laws governing the internal governance of corporations and other business enterprises can support personal liability of corporate directors and officers under environmental and other public health laws – for example:

- the corporate veil is pierced;
- the director or officer personally participated in the improper activity; or
- the director or officer personally exercised substantial control and supervision over the activity in question.

US law generally does not permit liability based only on the corporate position or job title of director or officer. However, federal prosecutors can rely on a range of surrogates to prove the executive's knowledge. Therefore, criminal charges can be pursued when the directors or officers:

- are personally aware of, or involved in, the commission of a crime;
- aid and abet a crime;
- fail to prevent the commission of a crime by others within the corporation by either turning 'wilfully blind' or negligently supervising the conduct of those subject to their control; or;
- fail to implement preventive measures to ensure that violations do not occur.

Directors' and officers' liability insurance and corporate indemnification can mitigate such liability.

Law stated - 26 September 2025

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 a circuit court of appeals, a party may petition the US Supreme Court to hear an appeal, but the Supreme Court's jurisdiction is discretionary and rarely exercised. The Supreme Court recently has increased the use of its 'shadow docket' to decide interlocutory appeals of lower courts' preliminary injunctions.

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. State court systems vary as to the possible levels of appeal, but there are typically two or three levels of courts (although the jurisdiction of some courts of appeal may be discretionary).

Law stated - 26 September 2025

INTERNATIONAL TREATIES AND INSTITUTIONS

International treaties

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

Yes. For example, regionally, the US and Canada have a bilateral Air Quality Agreement. The US is also party to the North American Agreement on Environmental Cooperation and the North American Free Trade Agreement and its side agreements, which have environmental aspects.

Multilaterally, the US is party to, among other agreements: the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter; the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora; and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. The State Department maintains a [complete list](#) of international agreements to which the US is party. The US is not a party to a number of other multilateral environmental agreements, generally for lack of certain domestic authority for which new legislation would be required before the US could join, including: the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal 1989; the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 1998; and the Stockholm Convention on Persistent Organic Pollutants 2001.

In an effort to address global plastics pollution, the US is currently involved in negotiations with other countries for a legally binding international treaty that would apply to the entire life cycle of plastics. If adopted, the treaty may impose legal requirements that would essentially

govern plastics use in all products. The most recent (sixth) round of negotiations (INC-5.2) was held in August 2025, but still yielded no final agreement.

However, the current administration is generally skeptical of international environmental treaties. A 20 January 2025 executive order withdrew the US from the Paris Climate Agreement to 'prioritize US economic and energy interests'. However, as of the time of publication, the US remains party to the parent agreement, the United Nations Framework Convention on Climate Change (UNFCCC), which governs the Paris Agreement. As a result, the US is still able to vote on UNFCCC resolutions and has GHG reporting obligations. The current Administration's desire to enter into various new international trade agreements may also be a vehicle for changes to environmental obligations.

Law stated - 26 September 2025

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 multinational environmental agreements through national statutes and regulations. In some 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. 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.

States, however, in some cases have taken the lead to act consistent with international treaties and laws. For example, the states that have adopted carbon credit systems have adhered to the model of the European Union Emissions Trading System. Additionally, foreign treaties may influence environmental best practices adopted by transnational corporations operating in the US.

Law stated - 26 September 2025

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics in environment law in your jurisdiction?

The re-election of President Trump in November 2024 unified Republican control of the Executive and Congress, and a conservative super-majority on the US Supreme Court have heralded a sea change in environmental law in the US, just as the Biden and first Trump administrations had heralded sea changes four and eight years earlier. The severity of these policy swings has increased over time, with the current Trump administration focused on not only promoting its favoured policies going forward but also eviscerating prior actions taken

by its predecessor, including reevaluation and withdrawal of prior approvals for complex infrastructure projects.

Overall, the emerging environmental law trend is deregulation. Largely through a litany of unilateral executive orders, as well as corresponding individual agency directives, the Trump administration has indicated a desire to greatly increase domestic industrial and certain energy development by curtailing the breadth of environmental regulations and time frames that companies must endure. In particular, there is a strong emphasis on de-emphasising climate change and environmental justice initiatives. Individual agencies are actively identifying regulations and even whole divisions or offices to amend or rescind. At the same time, the federal workforce has decreased significantly, posing challenges for implementation and enforcement of environmental and natural resources laws.

Further, criminal case for alleged environmental crimes have slowed in the past year. In reaction to federal environmental law developments, and those that can be reasonably expected in the future, additional environmental statutory and regulatory protection, as well as environmental enforcement, can be expected at the state and local levels, subject to their budgeting constraints. In addition, increased numbers of citizen suits by non-environmental and public health organisations likely will continue to be filed. The extent to which such non-federal efforts can fill their perceived gap in federal efforts is unclear.

At the same time, the judicial branch of government wields increasingly significant influence and power over environmental and climate policy. Many regulatory efforts and policy reversals have triggered significant amounts of litigation across the country, particularly under the Administrative Procedure Act (APA). In several instances, ongoing challenges to Obama, Trump or Biden administration rules have been mooted or stayed to accommodate new litigation on superseding Trump administration regulatory actions. In some cases where new actions were struck down in court, the original challenges subsequently resumed. Other cases seek broad relief from industry for climate change impacts under common law theories. These cases will continue for the foreseeable future. Meanwhile, the *Corner Post* decision may reopen older agency actions to fresh challenges. The Supreme Court's and other federal courts' increasing scrutiny of federal agency actions in the environmental arena marks a shift of power from agencies to courts. In particular, the Supreme Court's 30 June 2022 decision in *West Virginia v EPA* narrowed the Biden administration's ability to meet its environmental and climate goals by prohibiting the Environment Protection Agency (EPA) from mandating generation-shifting (from coal-fired power to renewable energy generation) measures under the existing Clean Air Act. In doing so, the Supreme Court relied upon a 'major questions' doctrine that could form the basis for further challenges to environment-related actions by agencies. In addition, the Supreme Court's 25 May 2023 decision in *Sackett v EPA* narrowed the scope of federal jurisdiction over wetlands under the CWA by requiring wetlands to have a 'continuous surface connection to bodies that are waters of the US in their own right.' In June 2024, the Supreme Court issued three major decisions that further impede on agency decision-making power. *Loper Bright Enterprises v Raimondo* overturned the basic *Chevron* standard of deference to federal agencies in reviewing their interpretations of ambiguous governing statutes, and affirmed courts' role in determining 'the best reading' of a statute. *Ohio v EPA* stayed the EPA's 'Good Neighbour' rule, which would have imposed obligations on states whose air pollution impacts states 'downwind' of them. *SEC v Jarkesy* limited the Securities Exchange Commission's administrative adjudication authority, raising the question of whether other agencies (including those involved in environmental rules and policies) can seek civil

penalties through administrative proceedings in the future. And the June 2025 decision in *CASA v EPA* largely removed nationwide injunctions as a means to preliminarily or permanently delay new agency initiatives. Meanwhile, the Supreme Court's *Loper* and *Seven County* decisions reaffirm deference owed to agencies under the APA on factual or technical issues. These cases and the outcome of upcoming environmental and administrative law cases applying the Supreme Court's new precedent will further erode or bolster the ability of federal agencies to pursue environmental objectives.

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Law stated - 26 September 2025