

ENVIRONMENTAL LAW

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THE ENVIRONMENT

Pollution is not bad.

Too much pollution is bad.

Pollution in excess of the ecosystem's regenerative ability is too much pollution.

STATIC LIMITS
DYNAMIC LIMITS

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Increased population and increased industry created the ability of humans to exceed the regenerative abilities.

Fundamentally, both the QUANTITY and the QUALITY of human generated pollution has changed.

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Pollution is a **zero priced** (public) good because no one owns the regenerative ability.

Impact of pollution is **unpredictable**.

Geopolitical boundaries restrain governmental solutions

starve today v. die of poisoning tomorrow

It is feasible to have an ecology without economy, but it is not feasible to have an economy without an ecology.

COMMON LAW and the ENVIRONMENT

trespass: exclusive possession
physical invasion

nuisance: use and enjoyment
reasonable
standing to sue
public nuisance
private nuisance

REGULATION of the ENVIRONMENT

preemption v. concurrent

STATES

MUST implement Federal minimums

MAY set greater local protection

police power

versus

eminent domain

REGULATION of the ENVIRONMENT

preemption v. concurrent

FEDERAL

Environmental Impact Statement (EIS)

- 1. major federal action that
 - 2. substantially affects human environment
- social if and only if physical

Elements of an EIS

- A) alternatives
- B) avoidable impacts
- C) unavoidable impacts
- D) LR v. SR impacts
- E) irreversible impacts

FEDERAL: CONTINUED

AIR

primary standards

protect public

secondary standards

protect environment

cost not an issue

mobile v. stationary

if now dirty, then no new pollution

emission offset via bubble

if now clean, then prevent significant deterioration

maximum allowable increase

FEDERAL: CONTINUED

WATER

commerce clause

especially transportation on

navigable waterways

point v. non-point

permits & variances

NEW: best available technology:) under

OLD: best practicable technology:) debate

conventional v. toxic: nonconventional

FEDERAL: CONTINUED

HAZARDOUS WASTES

paper trail
notice
civil & criminal

TOXIC PRODUCTS

paper trail
regulate use (least restrictive)
notice to EPA

WILDLIFE

all life forms equal
Gene pool

extinction = irreversible?

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