Environmental Law and Global Climate Change.

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**Category:** Laws, treaties, and protocols

Federal environmental laws such as the Clean Air Acts, although formulated before the modern scientific study of climate change, have become the chief vehicle for attempting to reduce GHG emissions. Several states have passed climate change initiatives, as has the international community in the Kyoto Protocol.

**Key concepts**

*cap-and-trade agreements:* transaction-based agreements that make the right to emit greenhouse gases or other pollutants a fungible commodity

*greenhouse effect:* increased warming of the Earth caused by absorption of heat energy by gases in the atmosphere

*greenhouse gases (GHGs):* gaseous constituents of the atmosphere, such as carbon dioxide, that contribute to the greenhouse effect

*legal standing:* eligibility to bring a civil lawsuit in a specific case, usually as a result of suffering damages

*litigation:* disputes in court between parties regarding the meaning and execution of laws

**Background**

For most of human history, the environment was to all intents and purposes unprotected by law. In Anglo-American law, the near-absolute dominion that was accorded to owners of property put little restraint on the right to consume, exhaust, or pollute resources at will. A nuisance lawsuit could be pursued if a neighbor deprived a property owner of the ability to enjoy such essentials as light, air, and water. The public trust doctrine restrained landowners from monopolizing access to navigable waters. Other than these impediments, American law left the environment open to even the most rapacious use. The preservationist movement of John Muir and Gifford Pinchot focused on conserving public lands and parks; it had little effect on private uses of land.

**Environmental Law**

This situation changed in the United States with the introduction of environmental laws in the twentieth century. The first environmental laws were an extension of nuisance laws and health and safety laws: protecting against environmental threats to the safety of the population, rather than the environment itself. But by the 1970’s, laws to protect the environment had found broad acceptance in American political and popular culture. The National Environmental Policy Act of 1970 (NEPA) established federal guidelines for protecting the environment. In the same year, Congress established the Environmental Protection Agency (EPA) as the federal authority to oversee enforcement of the environmental laws, and the Clean Air Act Extension to control air pollution.

The Clean Water Act was enacted in 1972 to protect the purity and drinkability of water and to preserve wetlands. The Energy Policy and Conservation Act of 1975, as amended by the Alternative Fuels Act of 1988, mandated automobile fuel economy standards and encouraged the develop-
ment of alternative fuels in vehicle use. The Comprehensive Environmental Response Compensation and Liability Act of 1980 provided a superfund program to clean up hazardous wastes.

*Global Climate Change and the Law*

In 2009, the United States contemplated legislation aimed directly at global warming; previously, legal controversies over global warming focused on the extension of existing environmental laws to greenhouse gases (GHGs). For example, the landmark case of *Massachusetts v. EPA* (2007) concerned the question of whether motor vehicular emissions of GHGs are air pollutants and thus subject to regulation under the Clean Air Acts (1963-1990). A major barrier in all environmental law litigation is the question of legal standing—who is permitted to bring a lawsuit on behalf of the environment. Normally a plaintiff must show a concrete and immediate harm.

In *Massachusetts v. EPA*, the U.S. Supreme Court allowed a coalition of environmental groups and state attorney generals to bring the lawsuit. After hearing evidence from both sides, the Court required the EPA to determine if carbon dioxide (CO$_2$) emissions satisfy the definitions of an air pollutant under the Clean Air Acts and are thus subject to EPA regulation. Likewise, in *Border Power Plant Working Group v. Department of Energy* (2003), the federal government was required to consider power plant CO$_2$ emissions in regulating the construction of power lines and grids. The administration of George W. Bush, however, did not believe administrative action was required as to climate change. The 2008 election of President Barack Obama signaled a change in executive enforcement. On April 17, 2009, the EPA announced that it had determined that CO$_2$ and other gas emissions were indeed dangers to public health and welfare and thus subject to its mandate.

Several U.S. states took legislative action on climate change before the U.S. Congress. California in particular passed legislation to restrict GHG emissions. As specific carbon emission legislation is passed by the states, there may be less reliance on older, more general environmental laws to address global warming concerns. The Regional Greenhouse Gas Initiative is a joint cap-and-trade program of ten northeastern states to reduce CO$_2$ emissions from power plants while pursuing clean energy programs. Globally, the 1992 United Nations Framework Convention on Climate Change launched the international effort to reduce carbon emissions. It found legal force in the Kyoto Protocol of 1997 establishing binding targets for reducing GHGs. However, upon taking office in 2001, President Bush renounced American participation in the protocol.

*Context*

Environmental legislation enacted since the 1970’s has provided some basis for regulation and litigation concerning CO$_2$ emissions that many believe contribute to global warming. Environmentalists have made use of such historic legislation as the Clean Air Acts to try to compel the EPA to include reduction of GHGs under its regulatory mandate, a step resisted by President George W. Bush but revisited by the Obama administration. States, particularly in the northeast and California, have been
more aggressive in enacting frameworks designed to reduce CO₂ emissions in a cap-and-trade system.

Given the exclusive authority that the federal government retains over national environmental questions and interstate commerce, it is hard to know how effective state legislation can be. The industrialized nations have been active in enacting frameworks, initiatives, and treaties addressing climate change, but, given the nature of international competition and national sovereignty, the future of such essentially voluntary restrictions is uncertain. One of the largest questions facing Congress is how to integrate federal policy with both state and international initiatives.

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• Further Reading


See also: Clean Air Acts, U.S.; Environmental movement; U.S. and European politics; U.S. energy policy; U.S. legislation.