History of Environmental Law

• 1970s
  – Environmental protection organizations (e.g., the Sierra Club) sprang up.
  – Publications (e.g., The Environmental Law Reporter) began.
  – Body of environmental law decisions expanded.
  – Law schools created separate environmental law classes.

• 1980s
  – The field of environmental law began to look beyond mere mechanisms of environmental litigation and consider issues such as environmental “elitism” and environmental “racism”.

• 1990s
  – Environmental battle became a political battle.
    o Candidates for local, state, and national offices asked to describe their positions concerning current environmental issues and were held accountable for their votes and decisions.
Environmental Justice

• Topics important to an understanding of later cases and topics:
  – NIMBY (Not-in-My-Backyard)
    o This syndrome reflects a common view of citizens living or working near a proposed facility that may pose an environmental threat.
    o The phrase basically means that the citizens do not want such a facility anywhere near where they are.
    o In response to this syndrome, many local governments have begun providing a forum in their facility siting process for citizens to make a public record of their concerns.
  – Environmental racism
    o The process of locating dangerous environmental activities in areas where minority populations do not have significant resources to speak out on the issue
Environmental Justice (cont.)

– Environmental elitism
  o The process of locating dangerous environmental activities in areas of low income or minority populations not having significant resources to speak out on the issue

– LULUs (locally undesirable land uses)
  o Any potentially dangerous manufacturing, processing, or disposal facility in the vicinity of a developed area

– Police power
  o The power of governments to make laws to protect the health, safety, and welfare of citizens
Standing & Environmental Law

• Cases and controversies
  – A phrase describing, collectively, the restraints on federal jurisdiction, such as prohibition against advisory opinions

• Standing to sue
  – Whether the plaintiff is the proper party to seek an adjudication of a particular issue in court
    o Means that a plaintiff has a sufficient stake in the case to obtain a sufficient judicial resolution of the controversy
  – Standing of individuals
  – Standing of corporations or associations
  – Standing of animals
General Requirements for Standing

- The plaintiff must have suffered an actual injury or be actually threatened to suffer an injury;
- The injury must be traceable to the defendant’s conduct (the causal connection); and
- The injury must be redressable by a favorable court decision
  - In other words, the court must be able to prevent or compensate for the injury suffered by the plaintiff
Risk Management & The Occupational Safety and Health Act of 1970 (OSH Act)

- Risk management
  - Consists of the evaluation of risks that might affect the successful operation of an entity’s activities, attempting to minimize or mitigate those identified risks, and ensuring that sufficient funds or insurance are available to compensate for any losses, should that become necessary

- Occupational Safety and Health Act of 1970 (OSH Act)
  - Created one federal agency specifically for the purpose of managing risks in the workplace
Occupational Safety & Health Administration (OSHA)

- Created by Congress through the OSH Act as an agency within the Department of Labor
- Tasked with ensuring workplace safety and required to set limits for employee exposure to toxic substances
- As a federal regulatory agency it must comply with the APA rule-making requirements in setting exposure limits
- The National Institute for Occupational Safety and Health (NIOSH)
  - A research agency created by the OSH Act to assist OSHA in establishing permanent exposure limits
Risk Assessment Process

• Hazard Identification
  – Is the toxic substance being studied causally linked to particular negative effects to humans or the environment?

• Dose-Response Assessment
  – How are the exposure levels and the probability of negative effects related?

• Exposure Assessment
  – At what level are humans or the environment exposed to the toxic substance?

• Risk Characterization
  – How big is the risk?
## Risk Assessment & Risk Management: Elements

<table>
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<tr>
<th>Research</th>
<th>Risk Assessment</th>
<th>Risk Management</th>
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<tbody>
<tr>
<td>Laboratory and field observations of adverse health effects and exposures to particular agents</td>
<td>Hazard identification (Does the agent cause the adverse effect?)</td>
<td>Development of regulatory options</td>
</tr>
<tr>
<td>Information on extrapolation methods for high to low dose and animal to human</td>
<td>Dose-Response Assessment (What is the relationship between dose and incidence in humans?)</td>
<td>Evaluation of public health, economic, social, political consequences of regulatory options</td>
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<tr>
<td>Field measurements, estimated exposures, characterization of populations</td>
<td>Exposure Assessment (What exposures are currently experienced or anticipated under different conditions?)</td>
<td>Agency decisions and actions</td>
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**Risk Characterization** (What is the estimated incidence of the adverse effect in a given population?)
Sierra Club

• Mission Statement
  – To explore, enjoy, and protect the wild places of the earth;
  – To practice and promote the responsible use of the earth’s ecosystems and resources;
  – To educate and enlist humanity to protect and restore the quality of the natural and human environment; &
  – To use all lawful means to carry out these objectives.

• Early influences

• Activities