

EHS Compliance

10/20/11



NBL

Compliance

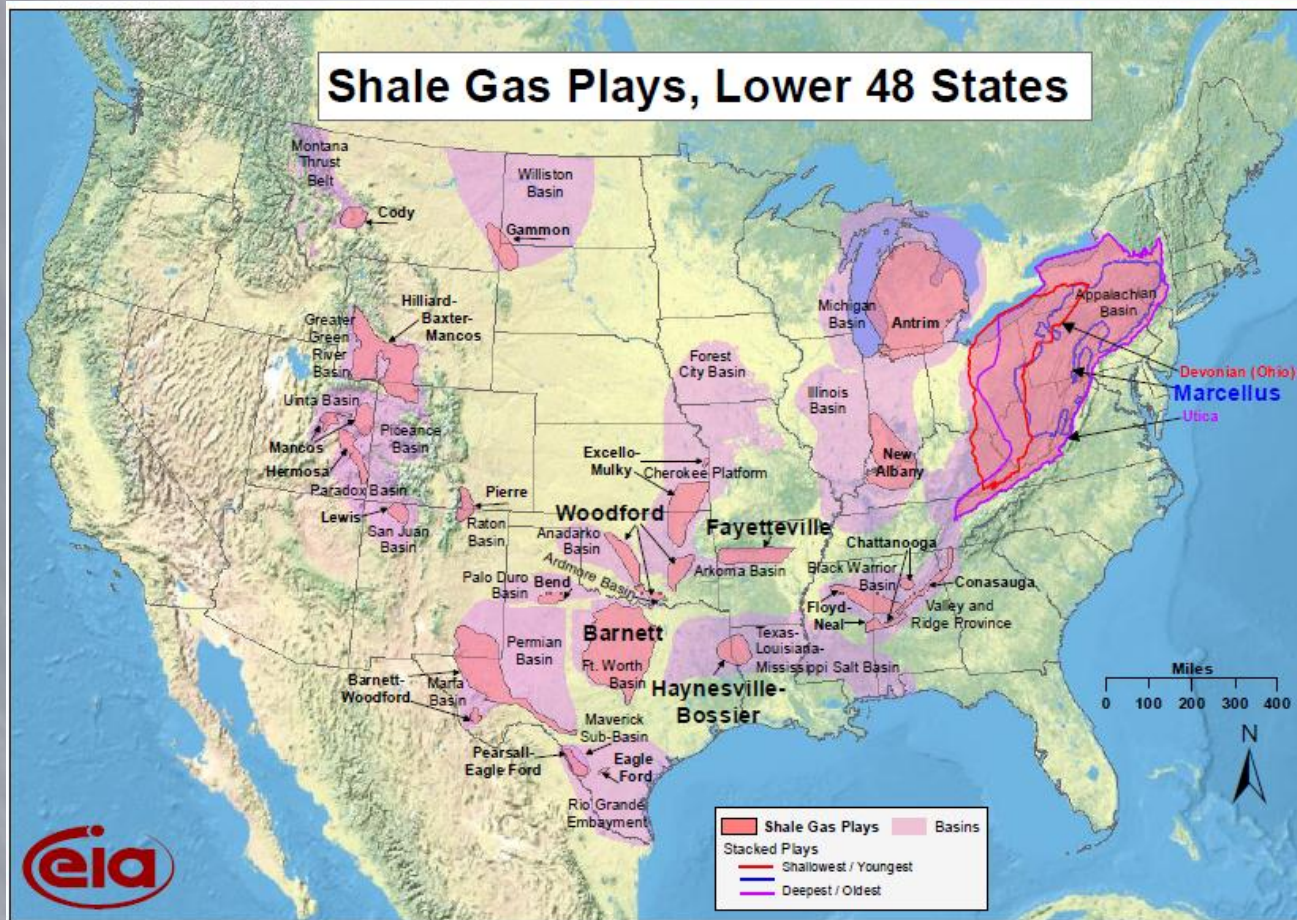
- ▶ **to conform, submit, or adapt (as to a regulation or to another's wishes) as required or requested < *comply* with federal law> <the devices *comply* with industry standards> *Webster's Dictionary***

Regulation or Other's Interest

- ▶ **Federal, State and Local Regulators**
- ▶ **Non Government Organizations**
- ▶ **Public and Community Interest**
- ▶ **Plaintiff Litigation**
 - ▲ Currently over 40 Plaintiffs Actions on Oil and Gas Extraction
- ▶ **Industry Reputation**
- ▶ **Individual Company Reputation**

Energy Extraction: Expansion

Advances in hydraulic fracturing and horizontal drilling have opened new areas for oil and gas development.



Source: Energy Information Administration based on data from various published studies. Updated: March 10, 2010

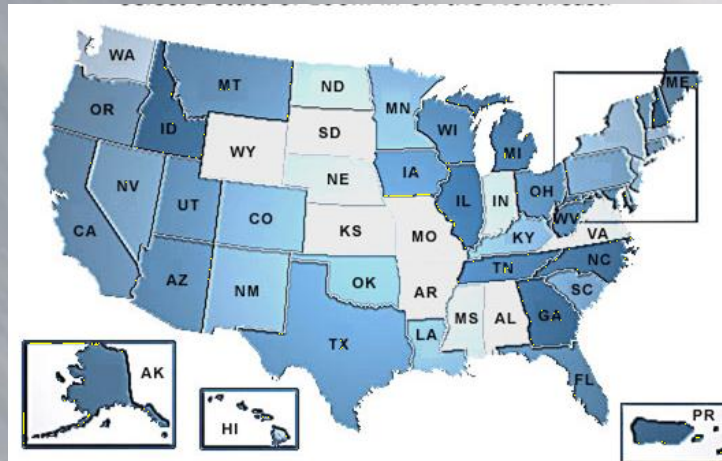
Sources of Environmental Law

- ▶ **Legislation (federal, state, local)**
- ▶ **Regulations (federal, state, local)**
- ▶ **Court decisions (interpreting statutes and regulations)**
- ▶ **Common law**
- ▶ **Constitutions (United States, state)**
- ▶ **International treaties**
- ▶ **Foreign regulations**

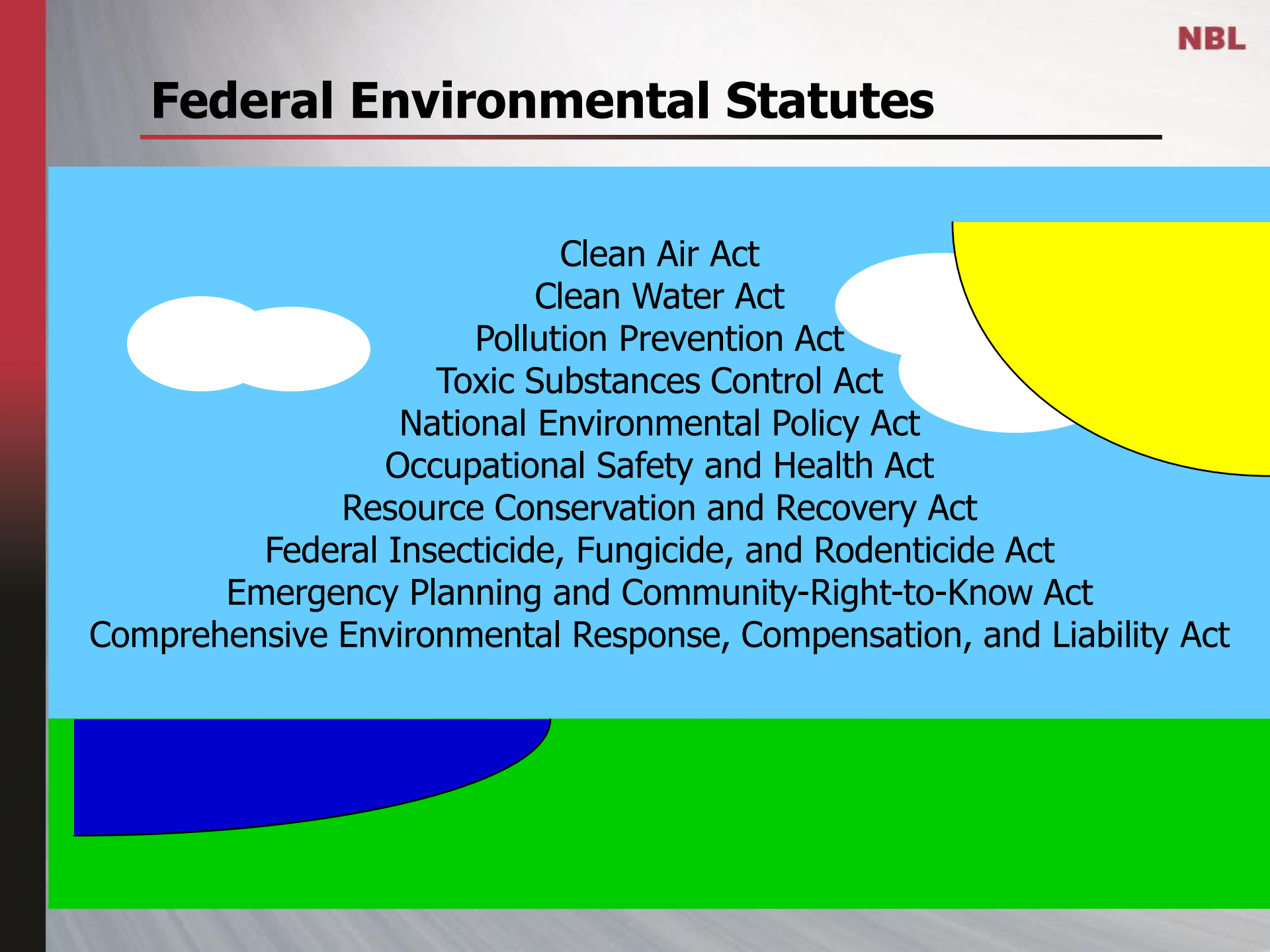
The Importance of State Laws

- ▶ **Some state laws implement federal programs**
 - ▲ Clean Water Act programs
 - ▲ Clean Air Act programs

- ▶ **Some state laws are independent from federal programs**
 - ▲ Massachusetts: Toxic Waste Minimization Law
 - ▲ California: Proposition 65
 - ▲ New Jersey: Property Transfer Environmental Law

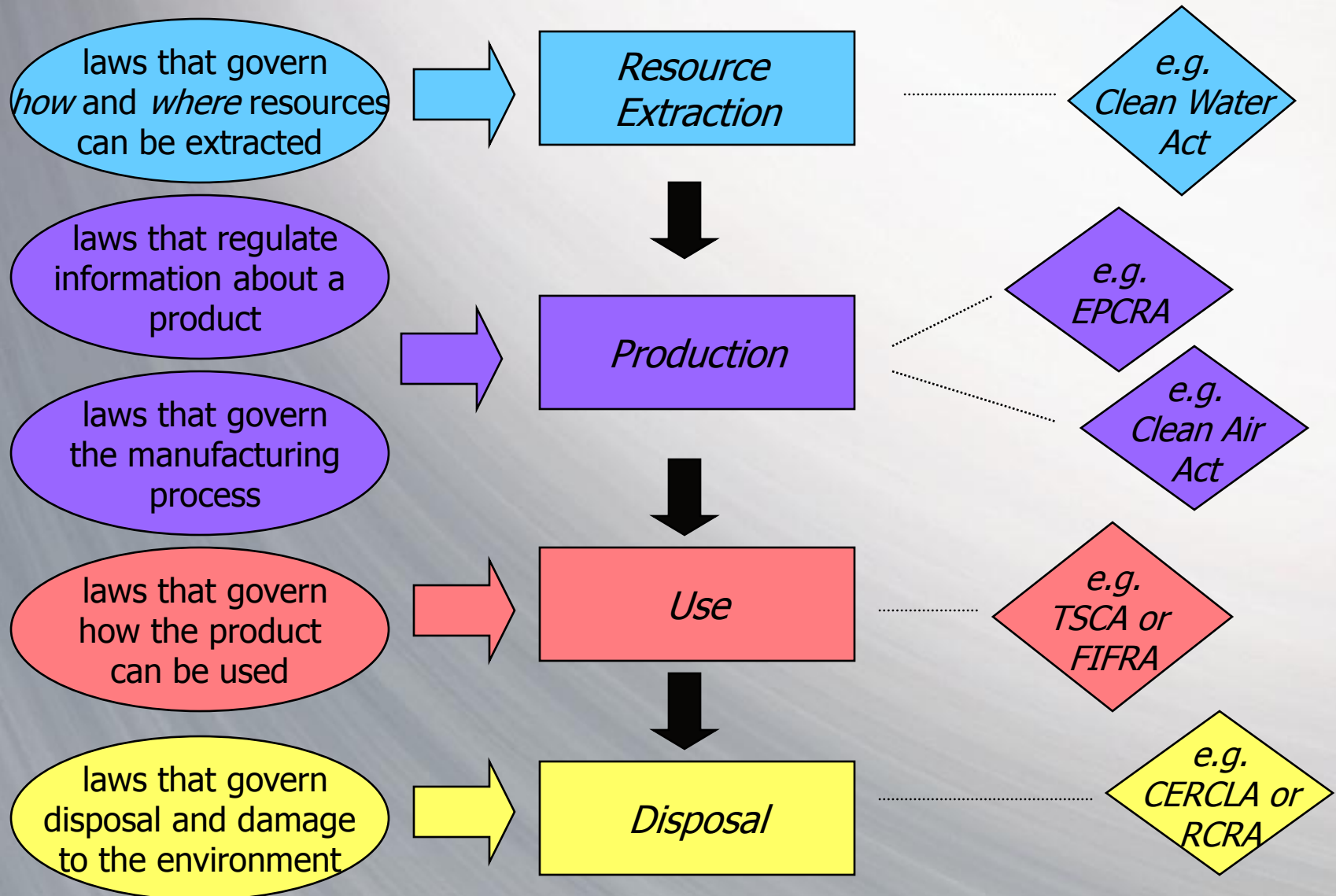


Federal Environmental Statutes



Clean Air Act
Clean Water Act
Pollution Prevention Act
Toxic Substances Control Act
National Environmental Policy Act
Occupational Safety and Health Act
Resource Conservation and Recovery Act
Federal Insecticide, Fungicide, and Rodenticide Act
Emergency Planning and Community-Right-to-Know Act
Comprehensive Environmental Response, Compensation, and Liability Act

Organizing Environmental Laws with a Life Cycle Framework



Onshore Petroleum Extraction

Rules that govern *where* to extract

- | | |
|---|----------------------------|
| (1) National Park System Mining Regulation Act | (5) Clean Water/Air Act |
| (2) Federal Land Policy and Management Act Act | (6) Wild and Scenic Rivers |
| (3) National Forest Management Act
Refuge System Act | (7) National Wildlife |
| (4) Federal Onshore Oil and Gas Leasing Reform Act | |

Rules that govern *how* to extract

- | | |
|--|-----------------------------------|
| (1) Clean Water Act | (4) Endangered Species Act |
| (2) Federal Onshore Oil and Gas Leasing Reform Act | (5) Safe Drinking Water Act |
| (3) Resource Conservation Recovery Act Act | (6) National Environmental Policy |

Rules that govern transportation of petroleum

- | | |
|--|------------|
| (1) Federal Onshore Oil and Gas Leasing Reform Act | (4) CERCLA |
| (2) Federal Land Planning and Management Act | (5) RCRA |
| (3) Department of Transportation Regulations | |

If We Have Such A Well Defined Process, What's Changed?

- ▶ **The process of enacting laws is long and time consuming**
- ▶ **This Administration is attempting to influence law through enforcement**
- ▶ **Climate Change legislation is an example**
 - ▲ Massachusetts vs. EPA (2007)
 - ▲ The EPA denied a petition by the state of Massachusetts for regulation of greenhouse gas (GHG) emissions from mobile sources under section 202 of the Clean Air Act (CAA)
 - ▲ According to the EPA CO₂ did not fall within the definition of "air pollutant"
 - ▲ The Supreme Court disagreed sighting the definition of air pollutant embraces all air born compounds
 - ▲ The court did not direct the EPA to regulate CO₂ under the CAA
 - ▲ The court did require the EPA respond to the petition for rulemaking
 - ▲ The EPA's recent endangerment finding attempts to allow regulation under the CAA

Energy Extraction Initiative

March 2010 EPA announced new **enforcement initiative** for energy extraction

First focus area is **onshore gas production**

Two major goals:

- Take action where violations cause **air or water impacts that threaten human health**
- **Ensure companies implement practices across operations**



Why Are NGO's Effective

Edelman Trust Barometer



NGO'S - Why They Are Strong

- ▶ **Have "Air Of Legitimacy"**
- ▶ **Seen As "Do-Gooders"**
- ▶ **Low Brand Awareness**
- ▶ **Exploit Politically Correct Thinking**
- ▶ **Have Economic Support**
- ▶ **Perceived To Be The Fighting Crusade For The Public**

NGO'S - Why They Are Winning

- ▶ **They Play Offense All The Time**
- ▶ **They Have Been Ingenious At Building Coalitions**
- ▶ **They Always Have A Clear Agenda**
- ▶ **They Move At Internet Speed**
- ▶ **They Don't Have To Be Accurate So They Work With A Larger Playing Field**
- ▶ **Play On Emotion Not Fact**
 - ▲ Precautionary Principle

The Public - Oil and Gas Exploration Litigation Trends

- ▶ ***“Never before have natural gas wells and drilling operations been so “in your face” and directly on or adjacent to land where people live and raise family and livestock” A Plaintiffs Primer on litigating natural gas cases***

GOT NASTY WATER?



To help legislators empathize with your problems, understand the importance of holding drillers accountable, and prioritize safety over profits, we invite you to complete this ***Local Contaminated Water Kit***, and deliver it to your local, state or federal legislators.

Current Litigation Trends

- ▶ **There are currently over 40 legal actions against oil and gas exploration**
- ▶ **The trend is growing with the Plaintiffs Bar Association thinking this is the next asbestos**
- ▶ **The trend is to stay away from Hydraulic Fracturing**
 - ▲ *"one piece of advice our firm has learned and can pass on is that plaintiffs counsel should stay away from the term Fracking"*
 - » *Napoli Bern Ripka and Associates*
- ▶ **What are the claims?**
 - ▲ Trespass
 - ▲ Strict Liability
 - ▲ Nuisance
 - ▲ Toxic Torts

Common Law Liabilities



Common Law v. Statutory Law

Common Law

- ▶ Rules are created by judges through court decisions.
- ▶ Because common law is continuously shaped by court decisions, common law can vary between different jurisdictions.
- ▶ Liabilities stem from personal injuries or property damage caused by environmental conditions.

Statutory Law

- ▶ Rules are created through legislative procedures.
- ▶ Statutes provide uniform, national frameworks for pollution control, e.g. Clean Water Act.
- ▶ Liabilities stem from national pollution control policies.

Common Law: Trespass



- ▶ ***Definition:***
unauthorized invasion of a person's land
- ▶ ***Application in environmental law:*** a defendant was held liable for trespass when defendant's sludge seeped on to plaintiff's land and yet defendant did nothing to stop it.

Common Law: Strict Liability for Ultra Hazardous Activities

- ▶ ***Definition of Strict Liability:*** the defendant can be liable if he was engaged in the activity that caused injury, without proof that defendant actually did anything wrong.
- ▶ ***Application in environmental law:*** the owners of a toxic waste dump were held strictly liable for harm caused to others even though the situation looked like a CERCLA issue.

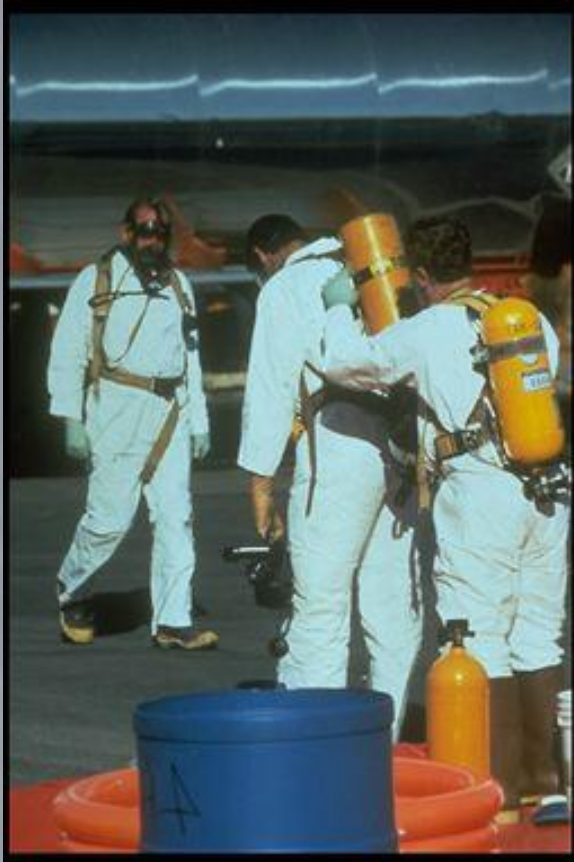


Common Law: Nuisance

- ▶ ***Definition:*** An action brought against somebody for interfering with one's use and enjoyment of property
- ▶ ***Application in environmental law:*** In Florida, a court ruled that an oil company unreasonably interfered with the ability of neighboring land owners to peacefully occupy their land because of noise, vibrations, and emissions from the plant.



Common Law: Toxic Torts



- ▶ ***Definition:*** A claim for damages arising from exposure to a harmful chemical or substance.
- ▶ ***Application in environmental law:*** Environmental torts are increasingly related to injuries caused by exposure to pesticides, PCBs, benzene, heavy metals, and other contaminants.

Conclusion



*We must ensure that
[energy] production
is safe, responsible,
and efficient.*

President Barack Obama, *Blueprint for a
Secure Energy Future*, March 30, 2011
([http://www.whitehouse.gov/sites/default/
files/blueprint_secure_energy_future.pdf](http://www.whitehouse.gov/sites/default/files/blueprint_secure_energy_future.pdf))

The Path Ahead

▶ **Be Involved**

- ▲ Federal and State Legislators
- ▲ Trade Associations
- ▲ Community Involvement
- ▲ Educate Educate Educate

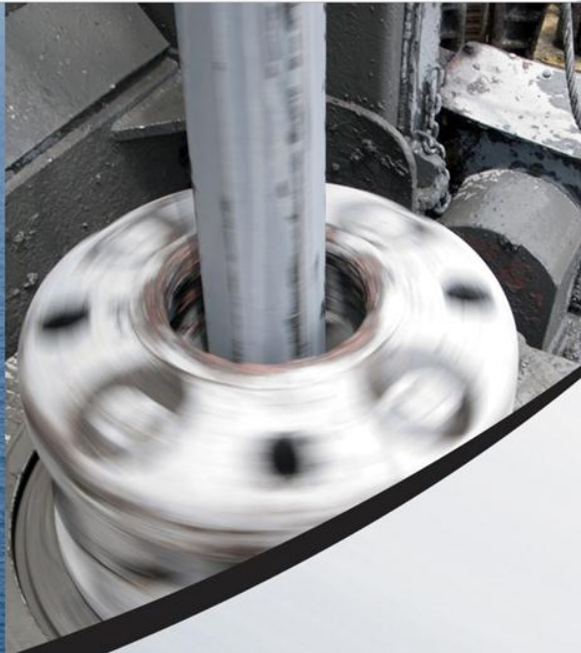
▶ **Execute Flawlessly**

- ▲ Industry Must Set Standards and be Accountable

▶ **Review Internal Compliance Strategy**

- ▲ Background Sampling
- ▲ What is Your Environmental Defense Strategy

▶ **Comply Don't Complain**



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