PUBLICATION UPDATE

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ENVIRONMENTAL LAW PRACTICE GUIDE

Publication 793 Release 97 October 2025

HIGHLIGHTS

Updated Bibliographies in This Release

- Chapter bibliographies have been updated throughout the publication.

Additional Updates

- Added throughout the publication are the latest statutory, regulatory, and case law developments.

This release primarily includes updates to the bibliographies of chapters throughout the publication.

Other updates include:

Chapter 1 on "Environmental Impact Statements" covers the Supreme Court's decision in Seven County Infrastructure Coalition v. Eagle County, in which the Court reiterated that courts must afford "substantial deference" to agencies when considering challenges to the scope and contents of an environmental impact statement (EIS). The Court also held that the D.C. Circuit had erred by requiring an agency to address environmental impacts "from projects that are separate in time or place from the . . . project at hand" and that fell outside the agency's authority and would be initiated by third parties. The chapter has also been updated with additional discussion of the Council on Environmental Quality's (CEQ's) removal of its National Environmental Policy Act (NEPA) implementing regulations, which CEQ revoked pursuant to a directive from President Trump and because CEQ believed it might lack authority to issue binding regulations after President Trump revoked the 1977 executive order directing CEQ to issue NEPA guidelines. The updates also cover the One Big Beautiful Bill

Act's amendment of NEPA to provide that project sponsors may obtain accelerated schedules for preparation of EISs and environmental assessments by paying a fee.

Chapter 17 on the "Clean Air Act" has been updated with a discussion of the U.S. Supreme Court's June 2025 decisions concerning the application of the Clean Air Act's venue provision in Section 307(b)(1). In the first decision, Environmental Protection Agency (EPA) v. Calumet Shreveport Refining, L.L.C., the Court ruled that the D.C. Circuit Court of Appeals was the proper venue for small refineries' challenges to EPA's denials of their petitions for exemption from compliance with the Clean Air Act's renewable fuel program because though each denial was a locally or regionally applicable action that ordinarily would be heard in a regional court of appeal, in this case "determinations of nationwide scope or effect" supplied the basis for the denials. In the second decision, Oklahoma v. EPA, the Court determined that challenges to EPA disapprovals of two state implementation plans were locally or regionally applicable actions reviewable in a regional circuit court of appeal.

Chapter 17C on "Global Climate Change" has been updated to reflect recent statutory, regulatory, and judicial developments. Those developments include the One Big Beautiful Bill Act's rescission of unobligated funding for many Inflation Reduction Act (IRA) programs and the legislation's repeal and modification of certain IRA programs, including repeal of the Greenhouse Gas Reduction Fund. In addition, the updates cover EPA's proposed rescission of the 2009 endangerment finding under Section 202 of the Clean Air Act for greenhouse gas emissions from motor vehicles and engines as well as the proposed repeal of all greenhouse gas emissions standards for fossil fuel-fired power plants. Litigation developments covered in this release include judicial decisions related to the consideration under NEPA of proposed actions' impacts on greenhouse gas emissions, including decisions by the D.C. Circuit and Ninth Circuit rejecting claims that agencies failed to adequately consider downstream greenhouse gas emissions associated with liquefied natural gas exports (D.C. Cir.) or the Willow Project, a major oil and gas project in Alaska's National Petroleum Reserve (9th Cir.).

Chapter 19 on "Wetlands" notes that effective January 17, 2025, the U.S. Environmental Protection Agency updated its regulations establishing procedures and criteria for state and Tribal assumption and administration of Clean Water Act Section 404. It was the first comprehensive revision of the regulations since 1988. Other developments related to federal wetlands regulation include the Trump administration's issuance of guidance on the implementation of the "continuous surface connection" requirement for adjacent wetlands to be considered "waters of the United States."

Chapter 24 on "Wildlife and Habitat Protection" has been updated to discuss developments related to the federal government's interpretation of the Migratory Bird Treaty Act's prohibitions on hunting, taking, capturing, killing, or attempting to take such actions. In April 2025, the Solicitor General of the U.S. Department of the Interior reinstituted a legal opinion issued in December 2017 that found that the prohibitions do not apply to incidental takes but instead "apply only to affirmative actions that have as their purpose the taking or killing of migratory birds, their nests, or their eggs." The updates to Chapter 24 also cover the U.S. Fish and Wildlife Service and National Marine Fisheries Service's proposal to rescind the definition of "harm" in their Endangered Species Act (ESA) regulations. "Harm" is a component of the statutory definition of "take" in the ESA, which prohibits the take of endangered species. The agencies stated that their current definitions of "harm"—which "prohibit actions that impair the habitat of protected species"—"do not reflect the best reading of the statute."

Chapter 40 on "Radioactive Materials" notes that the U.S. Supreme Court reversed—without reaching the merits—the Fifth Circuit's 2023 decision holding that the Atomic Energy Act does not authorize the Nuclear Regulatory Commission (NRC) to license private, away-from-reactor storage facilities for spent nuclear fuel and that the Nuclear Waste Policy Act does not permit such facilities. The Supreme Court held that neither of the parties who challenged the license granted by the NRC for a private temporary storage facility in Texas—the State of Texas and a private West Texas business—was eligible to obtain judicial review.

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