

**OLADE Graduate Distance Learning Module on
Environmental Law in the Energy Sector**

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by

**Magdalena A K Muir
President**

International Energy, Environmental and Legal Services Ltd.

Module Outline (for insertion in video)

Lecture 1: Introduction to Environmental Law

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Lecture 3: Environmental Regulation of the Energy Sector

Lecture 4: International Conventions and their Application to the Energy Sector

Lecture 5: Environmental Impact Assessment

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**Lecture 1:
Introduction to Environmental Law**

Contrast common law system prevalent in Canada, the United States, the United Kingdom and many Commonwealth countries, and *civil law* system prevalent in continental Europe and much of Latin America and the Caribbean.

Many of the differences between North and South American legal systems may not be the result of differences between common and civil law systems. Instead, these differences may be the result of a lesser degree of separation between government and the private sector, and differences in the Rule of Law with respect to the implementation of legislation, the conduct of government departments and agencies, and the lack of impartiality in the judicial system.

3. International business arrangements are also giving rise to international *arbitration* and transnational business and environmental practices. While these matters do not have the force of law, they may affect interactions between the company and the national country, or be used to comply with national environmental requirements.

Law is often divided into *public law* and *private law*. *Public law* is government regulation of the private and public sphere. *Private law* involves legal arrangements and relations between private individuals and corporations.

- Private law includes *contract, property* and *tort law*. The judiciary has an important role under private law in resolving disputes.

Role of the judiciary. It is necessary to have the *Rule of Law*, which requires a fair and impartial judiciary as part of any legal system. *Arbitration*, or a system of private arbitrators who resolve disputes at the consent of the affected parties, may supplement the role of the judiciary for disputed commercial transactions at the international and national level.

What is environmental law? Environmental law may be *constitution, legislation and regulation, policies, voluntary or mandatory industry standards, and negotiated arrangements*.

Lecture 2

Rule of Law, Implementation and Enforcement of Environmental Law

The *Rule of Law* is important for environmental regulation of the energy sector. The *Rule of Law* includes the *jurisdiction* and legal authority of government and agencies, administrative law and *natural justice and procedural fairness*, and a fair and impartial judiciary.

Discussion of the concept of the *Rule of Law*:

- Concept that government is not above the law, and is subject to legislation and the scrutiny of the court.
- There is also the concept that legislation is appropriately enacted, and fairly and impartially applied.
- Under the Rule of Law, the judiciary is required to be fair and impartial.
- There are also procedural and substantively fairness requirements for the actions of government departments and administrative agencies. These requirements are enforced by *judicial review*.

Implementation and enforcement of environmental law:

- The command and control approach is the traditional approach of government for enforcing environmental laws.
- Under modern environmental legislation, there are also complimentary measures such as civil litigation rights for damages arising from unauthorized pollution, and private enforcement rights under legislation.
- Alternative means of satisfying environmental requirements are developing, particularly for the energy sector. These alternative means include *environmental risk* and *environmental management systems*. There is also a role for voluntary or *mandatory industry standards*, and negotiated arrangements.

Lecture 3

Environmental Regulation of the Energy Sector

Application to environmental law to energy regulation, and energy regulators established to regulate energy. Range of items that constitute environmental law in the energy sector include

- legislation and regulations,
- policies of government and energy regulators,
- decisions of government and energy regulators,
- voluntary and mandatory environmental and industry standards,
- negotiated industry codes and standards, and
- environmental management systems.

Energy regulators and their approach to environmental regulation.

- Tradition of *energy regulators*, or *independent administrative agencies*, that regulate the energy sector. These energy regulators are established under legislation which defines their jurisdiction, or the scope of their responsibilities.
- *Administrative law* is the body of law that deals with the scope and responsibilities of independent administrative agencies, and requirements of *natural justice and procedural fairness*
- There may also be an independent *environmental impact assessment* process for the energy sector. This process may be described under separate legislation, and administered by energy regulators or environmental assessment agencies.
- Energy regulators may also apply or consider other legislation containing environmental components such as legislation for parks and protected areas, as well as internal policies and guidelines.
- There also are a variety of multi-stakeholder models, and negotiated settlement processes for North American energy regulators.

Judicial review of energy regulation includes:

- judicial scrutiny of energy regulators that function in a decision making capacity, and
- environmental assessment processes and panels implementing that process.

**Lecture 4:
International Conventions and their Application to the Energy Sector**

International environmental and trade agreements are domestically implemented through national legislation and policies in countries that are signatories to these agreements.

International environmental agreements include

- multi-lateral environmental agreements;
- international trade agreements with environmental components; and
- more recent hybrids like the Climate Change Convention and Kyoto Protocol which contemplate a combination of environmental and market measures.

Each country has different means of domestically implementing its international obligations.

Explicit recognition of environmental aspects of trade in the World Trade Organization (WTO) agreements, the WTO trade and environment committees, and the environmental side agreements under the North America Free Trade Agreement.

International environmental conventions and trade agreements affect energy production, trade and consumption.

- Example of the Climate Change Convention and Kyoto Protocol and strategies of implementing this Convention and Protocol through voluntary measures, renewable energy and energy efficiency measures and emissions trading.
- OLADE countries are mostly not signatories to the Kyoto Protocol, though they may be exploring ways to participate in projects, clean development mechanisms and emissions trading.

Lecture 5: Environmental Impact Assessment.

Legal concepts and application of environmental assessment in decision making.

- Environmental impact assessment is a mandatory process that results in discretionary recommendations to decision makers such as government and administrative agencies.
- Government and administrative agencies must consider these recommendations but are not required to accept them.
- Environmental impact assessment must be an open and transparent process, and there must be a fair and consistent application of the process.

Environmental assessment is often applied to energy projects such as oil and gas exploration, the construction of pipelines and transmission lines, and energy exports.

There is a potential role for *alternative dispute resolution* and *mediation* for environmental impact assessment.

**Lecture 6:
Energy and Environment Issues in Competitive Energy Markets**

Overview of lecture on energy and environment issues in competitive energy markets:

- Emerging competitive energy markets
- Regulatory agency model
- *Negotiated settlement* model
- Role of renewable energy , energy efficiency and emissions trading under the Climate Change Convention and Kyoto Protocol

Context of Emerging markets in the Americas

- Elimination of monopolies and energy shortfall in many countries
- Increasing energy sector investment
- May retain dominant participants, and require independent regulation

General Resources

1. Reference Materials

2. Reference Materials for Module Lectures

3. Glossary of Key Terms

This is glossary of key terms. These terms are defined in the text of the lectures, and discussed in the reference materials.