Role of Judiciary in Pollution Management*

Introduction

Pollution management typically is the primary responsibility of executive or administrative agencies of government, private sector managers, and operators of public services such as waste collection and treatment. Prevention, control, and management of pollution depend on changes in individual and corporate behavior, including the use of appropriate technology. Some of these behavior changes and technologies may be required or encouraged by law. Government agencies often have a larger and more direct role in management of natural resources, particularly where, as is often the case, the resources are owned by the government.

The judiciary’s role in pollution and natural resource management is secondary to that of executive and administrative agencies. Although secondary, the role of the judiciary is significant – enforcing compliance with rules and standards. Because courts are final arbiters of actions to enforce environmental laws they can be instrumental in promoting compliance. Courts also are often given the role of reviewing the legality of decisions made by administrative agencies. Thus, the judiciary has a crucial and unique role in the management of pollution - ensuring that it operates under the rule of law.

Box 1. World Summit on Sustainable Development

In 2002, prior to the World Summit on Sustainable Development, more than one hundred senior judges from fifty-nine countries adopted the Johannesburg Principles. These set out the judges’ shared understanding of the role of the judiciary with respect to environmental law and sustainable development. They affirmed their commitment to principles of sustainable development, emphasizing the role of the judiciary in “implementing and enforcing applicable international and national laws, that . . . will assist in sustaining . . . an enduring civilization . . .” They further affirmed the principle that “an independent judiciary and judicial process is vital for the implementation, development and enforcement of environmental law; and that members of the judiciary . . . are crucial partners for promoting compliance with, and the implementation and enforcement of, international and national law.”

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Description and Application of Role of Judiciary in Pollution Management

In civil law jurisdictions, typically based on the Roman legal tradition and in use in much of the world, the role of judges is to apply the laws written by the legislature. In nations whose legal system is based on the British system, referred to as common law jurisdictions, the judiciary has an additional role - establishing rules of behavior and standards for pollution prevention and control. In common law jurisdictions judges apply to new facts the rules of law established by the legislature or by judges in prior decisions. Where the statutes or precedents are not clear, common law judges interpret the rules to fit new situations and, where there is no statute covering a situation, may establish new rules when the prior decisions or precedents do not fit the facts of the case. In both systems courts may be authorized to review actions by administrative agencies to assure they are in accord with statutory rules.

Strict liability, or the polluter pays principle, is another area where the common law contributed to the development of legal rules widely used in modern management of pollution. The English courts first articulated a rule of strict liability for injuries that result from unnatural uses of land or dangerous activities almost a century and a half ago in *Rylands v. Fletcher*. This rule of strict liability has been adopted by the courts in many common law jurisdictions as applicable to “abnormally dangerous activities.” The general rule is that (1) One who carries on an abnormally dangerous activity is subject to liability for harm resulting from the activity, although he has exercised the utmost care to prevent the harm. (2) This strict liability is limited to the kind of harm, the possibility of which makes the activity abnormally dangerous.

This legal concept has become generally accepted throughout the world even as it has become

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3 See *Restatement (Second) of Torts* §519 (1977).
4 Id.
broader in scope and become more widely understood as the polluter pays principle. Legislatures in both common law and civil law nations have enacted laws requiring polluters to pay for the damage they cause to the environment, applying strict liability to many forms of pollution. In addition, the polluter pays principle has been adopted in international treaties and in non-binding international instruments.

**Administration for environmental justice**

*Environmental law education at universities.* Environmental law is a relatively new topic of instruction in law schools, first gaining acceptance as a topic worthy of specific instruction in the 1970s. Nevertheless many law schools did not begin offering courses in environmental law before the 1990s. Academic institutions are also actively involved in providing instruction about their own national and sub-national environmental laws as well as comparative analysis of other national laws and international environmental law. The International Union for the Conservation of Nature (IUCN) has an Academy of Environmental Law that seeks to develop curricula on environmental law, particularly new topics such as climate change, and assist law schools in providing instruction on environmental law.

*Recruitment, training and permanent education of judicial officers.* The recruitment of judicial officers varies significantly from nation to nation, although many that follow the civil law system have adopted selection systems designed to recruit the most capable legal minds relatively soon after they complete their initial legal training. Another common attribute of many civil law jurisdictions is their requirement, and provision, of additional post-graduate education designed to prepare judicial officer candidates for the unique roles and responsibilities of the judiciary. These judicial academies may provide courses of instruction up to a year in length as well as supervised practical learning experiences with sitting judicial officers. Few such judicial academies, however, include environmental law as a regular part of their curriculum.

The United Nations Environment Programme (UNEP) had initiated a series of regional workshops to educate judges about environmental law, which led to the Global Judges Symposium and the adoption of the Johannesburg Principles in 2002. In the years following the Global Judges Symposium, UNEP developed several important resources specifically for judges: the Judicial Handbook on Environmental Law, authored by Dinah Shelton and Alexandre Kiss in 2005; the Guide to Global Trends in Application of Environmental Law by National Courts and Tribunals; and Judicial Training Modules on Environmental Law in 2007. It continued to hold regional workshops and partnered with the Environmental Law Institute (ELI) and other organizations, including national judicial education bodies, to educate judges in specific countries.
Other institutions dedicated to education of judicial officers are now providing programs on environmental law such as the American Bar Association Rule of Law Initiative, the Asian Environmental Compliance and Enforcement Network, and International Network for Environmental Compliance and Enforcement.

**Alternative dispute resolution mechanisms.**

Environmental disputes can be difficult to resolve for many reasons: they often involve technical evidence; may involve experts from many disciplines, including multiple scientific fields, economics, and engineering; they may affect or be affected by resources that may be difficult to observe (i.e. atmospheric or subsurface); they may involve multiple parties; and they often involve complex legal issues. The number of environmental cases can also become burdensome, particularly where judges face multiple cases involving one or more of these complicating factors. Courts and parties have therefore explored a number of mechanisms to reduce the burden on judges and the time and expense to parties of prolonged litigation such as:

- **Court-annexed arbitration** means that arbitration of the dispute remains within the judicial system rather than operating as a separate system of dispute resolution as is provided for by some contracts between businesses. Arbitration involves presenting information about a dispute to one or more impartial arbitrators, who then make a final decision that is binding on the parties.

- **Mediation** is intended to facilitate negotiation of a mutually agreed upon resolution of the dispute, though a mediator has no authority to impose a resolution or settlement. The mediator works with all sides and can help them identify alternative solutions.

- **Summary jury trials** were developed by a United States federal trial judge as a method of assisting parties in long, complex cases to evaluate the strength of their case, particularly their estimates of damages. A summary trial involves a non-binding summary presentation by each party to six jurors who deliver a consensus verdict or, if no consensus is reached, anonymous individual verdicts. Even if a complete resolution is not reached, this technique, along with the following two methods, can be useful in narrowing the issues before the court thus reducing the burden on the court.

- **Early neutral evaluation** is another process involving a mutually agreed on neutral party who helps the parties to the dispute evaluate the relative merits of their cases. The parties typically exchange written summaries of the issues, evidence, and views on liability and damage issues. The neutral then holds an informal evaluation session where the parties present their claims, defenses, and evidence. The neutral evaluator then prepares a written evaluation of the dispute, which is used by each party to inform its participation on further negotiations, sometimes mediated by the neutral evaluator.
Judicial settlement conferences may be conducted by the judge presiding over a trial and may be initiated by the judge, and therefore mandatory, or by the parties. They are informal, with no record made, but generally the parties are present along with the attorneys who will try the case.

Specialization of courts/court officers. A relatively small but increasing number of jurisdictions are relying on judges specially trained in environmental law to handle some or all environmental disputes. For example, in June 2009, the environment minister of Indonesia signed a Memorandum of Understanding with the Chief Justice of the Supreme Court providing that the ministry would train 100 judges in environmental law. These judges will be assigned to handle environmental cases throughout the country. A significant challenge for courts is obtaining funds to pay for training for specialization of judicial officers and for operation of environmental courts. Funding to train judges in environmental law has been provided by developed countries, multilateral development banks, and foundations, but funding to operate specialized courts typically must be generated locally.

Access to information on environmental law. Regardless of whether judges have had specialized training on environmental law, they will need access to sources of environmental law. Several excellent sources of information about environmental law are available to those with access to the internet. These include ECOLEX, operated by the International Union for the Conservation of Nature (IUCN), the Food and Agriculture Organization (FAO), and UNEP.

Box 3. Green Benches (India, New Jersey, USA)

In the mid-1990s the Supreme Court of India established a three-judge Green Bench typically headed by the Chief Justice, which handled numerous petitions and issued several landmark judgments. The Green Bench sat as often as weekly to hear petitions and oversee work by committees of experts it appointed to investigate and take action on environmental and natural resource issues. In 1996, the Supreme Court directed the chief judge of the Calcutta High Court to establish a Green Bench to hear environmental petitions. Later that year the Supreme Court asked the Chennai High Court to establish a similar green bench. These Green Benches are distinguished from Australia’s Land and Environment Court in that they are not separate courts, but rather a method of concentrating environmental cases before a single bench of judges. As of the end of 2009, however, the Government of India was preparing legislation to create an environmental tribunal as part of a comprehensive scheme to improve enforcement of environmental law.

Also in the 1990s, the Supreme Court of New Jersey adopted a rule requiring the chief judges of each of its districts to designate a judge to handle environmental cases that required expedited treatment. These special environmental assignment judges handle only those cases where the plaintiff alleges there is imminent danger and a need for expedited action by the court.
Environmental Law. More general is Global Legal Information Network (GLIN) [http://www.glin.gov/search.action](http://www.glin.gov/search.action) a public database of official texts of laws, regulations, judicial decisions, and other complementary legal sources contributed by governmental agencies and international organizations. These GLIN members contribute the full texts of their published documents to the database in their original languages. Each document is accompanied by a summary in English and, in many cases in additional languages, plus subject terms selected from the multilingual index to GLIN.

**Regional and sub-regional judicial colloquia / judicial cooperation.** Judges in several regions have formed regional colloquia to promote the Johannesburg Principles within their regions.

**Professional networks.** Several professional networks provide information and other assistance on environmental law and environmental issues to judges and other court officers. IUCN’s Commission on Environmental Law (CEL) is a network of experts in environmental law and policy who volunteer to share their expertise to promote the goals of IUCN’s Environmental Law Programme. The Commission has a Specialist Group on the Judiciary, whose purpose is to share knowledge, experience, and judgments among judges who handle environmental cases.6

The International Network for Environmental Compliance and Enforcement (INECE) is a network of professionals engaged in the practice of environmental compliance and enforcement.7 One of its chief goals is to improve capacity to enforce environmental requirements. It has regional groups around the world.

**Specialized Environmental Courts.** A recent study suggests that at least 35 nations have adopted some form of specialized environmental court or tribunal.8 These jurisdictions seek to address many of the challenges the judiciary faces when adjudicating environmental cases. Among the reasons cited for establishing such specialized courts are reducing the time to reach a decision, improve the quality of decisions by increasing expertise of judges, increase uniformity of decisions within the jurisdiction, improve access to justice by identifying a forum to handle environmental claims, reduce backlogs of cases, and avoiding marginalization of environmental cases because they are more time-consuming or complex.9 There are countervailing reasons given in favor of retaining jurisdiction


9 Id.
over environmental cases within courts of general jurisdiction, including the value of judges bring broad experience to bear on environmental matters that may have economic and social implications, concerns about increased costs of the judicial system, inadequate caseload to warrant investment in personnel, lack of judges with the needed expertise, and concern that the judges may be ‘captured’ by special interests.

A committee studying the general issue of establishing specialized courts in the United States set out the following criteria for evaluating whether such courts are needed:

1. The subject is a focused area of administrative decision-making, which is may be separated from other claims;
2. The area has a high volume of cases, whose diversion might alleviate burdens in generalist courts;
3. There is a predominance of scientific or other technical issues requiring special expertise of decision makers; and
4. Uniformity in agency administration of the program is important.10

Environmental litigation typically meets three of these four criteria with the only question being whether a jurisdiction has a high volume of environmental cases. The next question is whether to establish a specialized court or another form of tribunal. A specialized court is a special court within the judicial branch that has the full characteristics of courts within that jurisdiction such as independence, secure tenure for the judges, and judges trained in the field. The Land and Environment court of New South Wales provides a model for such specialized courts. (See examples discussed in Specialized Court box). Some jurisdictions have not been willing to fully adopt this model of a completely separate court, which can be relatively expensive in time and judicial resources, but have identified judges to handle environmental cases. These “Green Benches” may be more flexible in that the judges may be available to handle non-environmental cases if the environmental caseload is not sufficient to keep a court busy. The judges on the green benches are likely to develop expertise through their handling of the cases but the jurisdiction may not invest resources in providing training. India is a notable example of the application of Green Benches and of their flexibility in responding to varying caseloads. (See Green Bench box). Environmental tribunals are specialized decision-making bodies that are not part of the judicial branch of government. Typically they are housed within an administrative agency such as the nation’s environmental protection agency. Such tribunals can be expanded or contracted relatively easily to respond to varying caseloads and, as the experience in the U.S. demonstrates, can be very effective in handling large numbers of cases. The Environmental Appeals Board of the United States provides a model for such tribunals.

Experience has demonstrated that specialized environmental courts or tribunals are effective in resolving environmental disputes fairly, consistently, and efficiently and in reducing burdens on general courts. Such courts or tribunals are easily justified where there are a significant number of environmental cases and, even where the numbers may not be large may be worthwhile if general judges are having difficulty dealing with the complex scientific, economic, and technological issues.

The poor, disadvantaged, and those living in remote areas often have little access to justice. Courts typically are located in urban areas and lawyers can be too expensive for the poor to afford. Mobile courts can improve access to justice for the poor and those in remote areas by bringing the courts to their locations. Following a model established in Guatemala, mobile courts have been adopted by the Philippines, India, and Bangladesh.

Box 4. Guatemala and Philippines: Mobile Courts

Guatemala ended more than three decades of war in 1996 when peace accords were signed. The government and judiciary agreed that judicial reform was an essential aspect of post-conflict reconstruction and social stability. With support from the World Bank the judiciary created mobile courts – courts housed in buses that could take judges, court personnel, and courtroom facilities to people in remote regions. The buses are air conditioned and include facilities for hearing cases as well as for mediating disputes.

Initially mobile courts focused on cases involving the poor, youth, and women, and on reducing backlogs of cases involving these underserved people. The Guatemalan Mobile Peace Courts, for example, have jurisdiction in labor, family, and civil cases involving less than $3,000 (US). They have been credited with improving the perception of accessibility of the justice system to the poor. Recently the Philippine Supreme Court authorized use of one of its Justice on Wheels (JOW) buses to handle environmental cases in an area, the Visayas, known for its rich marine resources and subject to overexploitation of its marine environment. As with the Guatemalan buses, the JOW buses contain two rooms, one for hearing cases and a second for mediation of disputes. By authorizing the JOW to hear and mediate environmental cases in this region court administrators intend to deter violation of environmental law and overexploitation of the resources. In the Philippines funding for the JOW program is provided by local governments, which benefit directly from the reduction of backlog of cases as fewer poor people are held in prisons awaiting trial.

Prerequisite Factors for Role of Judiciary in Pollution Management

Case management systems, standard forms, computerizations etc to improve management of caseloads. Courts throughout the world are improving their delivery of court services through a variety of methods for reducing unnecessary paperwork and other nonessential tasks. Case management systems developed for other types of cases will be applicable in most environmental litigation. Computerization can be particularly useful for environmental cases that involve large numbers of parties as computers can manage large amounts of data. Judicial officers must be aware of the limitations of computerization, including that they depend on accuracy in the entering of data.
Transparency and accountability of the Judiciary. Transparency is fundamental to the rule of law and applies equally to the judiciary, to the executive, and to legislative authorities. An independent judiciary is also fundamental to effective governance and the rule of law, but does not negate the need for transparency.

Advantages and Limitations of Role of Judiciary in Pollution Management

Under both civil and common law systems, the judiciary’s role as an independent arbiter and guardian of the rule of law sets it apart from other tools for management of pollution. It is important for policy makers to recognize that judges are not environmental experts. The initial decisions about what actions are necessary in order to prevent or control pollution generally should be made by executive or administrative officials on behalf of government and facility managers on behalf of pollution generators. Policy makers need to understand the limited but essential role of the judiciary in ensuring that pollution laws are applied fairly and that those subject to the law comply. Judges, however, must also recognize that, although environmental law is relatively new and may be unfamiliar to them, they have a duty to apply their best efforts to that area of the law as they do to any other field of law. Environmental law can be complex and often relies on relatively new and difficult scientific concepts and on technically advanced evidence. Nevertheless, the role of the judiciary remains to ensure the peaceful disposition of disputes, uphold the rule of law, apply, and, where authorized, interpret the law.11

In carrying out its duties described above, the judiciary in both civil and common law

Box 5. India’s Supreme Court Role in Pollution Management

In one case the Court ordered the capital city of New Delhi to convert all public vehicles from buses to taxis and auto-rickshaws to run on compressed natural gas (CHG) as a means to reduce air pollution. The court has also ordered mass closures and relocations of industrial facilities out of cities and the construction of facilities to treat and dispose of hazardous wastes. Each of these decisions were made directly by the court rather than in reviewing decisions made by government officials. The Court has stated that it has made these decisions only in the absence of action by government officials, but doing so has required extremely large commitments of time and resources by the court. Because the judges lack expertise in environmental sciences and management they have relied heavily on advisory committees of experts. Although many of the Court’s decisions have been credited with providing immediate solutions to pollution problems, it is generally acknowledged that government officials are better at making decisions concerning the means to achieve environmental goals. Government officials generally have access to more complete information and expertise than judges and can involve other affected or relevant agencies and the public in the decision making process in ways that courts are not well suited to do.

jurisdictions must ascertain and apply the rules of law. These include a nation’s constitution, which in many cases establish environmental rights and responsibilities on citizens and

11 Dinah Shelton and Alexandre Kiss, Judicial Handbook on Environmental Law, UNEP (2005) at XIX.
government,\textsuperscript{12} national laws (including common law where applicable),\textsuperscript{13} and, where applicable, international law. Most nations, regardless of whether they have a common or civil law system, have enacted statutes regulating pollution. As a result the role of judges in both systems is quite similar in cases relating to management of pollution – they all apply the statutory rules to the facts of the case. The core function of judges in both systems is to assure that the law is fairly administered.

Another important role of the judiciary in both systems is to assure that everyone has access to the courts and to justice. In addition to its articulation by judges in the Johannesburg Principles, access to justice has been considered a key element of international environmental law through its inclusion in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) and other international instruments.

Regardless of whether a nation has a specialized environmental court, the courts will need resources to provide computers and training in their use to judges handling environmental (or other) cases with large numbers of victims or potential defendants and highly technical evidence in order to effectively manage the information and deliver justice to all the parties.

Specialized environmental courts are the gold standard for competent, uniform, efficient, and fair enforcement of environmental law by the judiciary. Such courts require a significant investment by a jurisdiction in funding, but also significantly in training and otherwise developing the expertise of the judges assigned to such a court. Costs are likely to be primarily for the salaries of members of the specialized court. If the members are already judges and are not replaced in the general courts the overall salary costs may not increase, but many jurisdictions have found it most beneficial to appoint people with expertise in environmental law or environmental issues, thus adding to the number of judges. These investments may in some situations be directly recouped due to savings in the time and resources of general courts that no longer handle complex environmental cases. In most situations the investment is likely to be worthwhile when broader considerations of administration of justice are considered.

In the absence of specialized courts, non-judicial environmental tribunals can be an effective means of accomplishing some of the goals of specialized courts, particularly uniformity and competence, at a lower cost and in a more flexible manner. Such tribunals are not as efficient as specialized courts because their decisions typically are, as they should be, subject to review by regular courts. Tribunals may be particularly useful in handling routine cases of enforcement of pollution control laws including establishing penalties and other sanctions, the terms by which

\textsuperscript{12} Id. at 7. \textit{see e.g.} Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa, 2nd Edition ELI (2007).

\textsuperscript{13} Shelton and Kiss \textit{supra} note 2 at 6-7, 8-9.
a polluter must clean up the pollution and bring its facility into compliance, and the actions it must take to restore damage to the environment. This reduces the need for a reviewing court to immerse itself in the technical details of compliance, clean up, and restoration.

The complexity and novel concepts involved in environmental law mean that the judiciary needs to be trained in environmental law. Such training need only be provided to the limited number of judges who are members of a specialized court, but in the absence of such a court basic training for all judges is important so that they do not misapply this complex area of the law. In time such training will likely be provided to most graduates of law schools, but in the interim specialized post-graduate training for the judiciary is needed.

Interaction with Other Tools and Possible Substitutes

Judges cannot administer justice alone, they rely on many others including prosecutors, attorneys for private interests and non-governmental organizations (NGOs), and expert witnesses. Prosecutors typically represent the interests of the public and particularly in many civil law jurisdictions this is a broadly encompassing role.

Box 6. Case example from Brazil

Members of the Ministerio Publico in Brazil, for example, oversee the functioning of state and federal environmental agencies to assure they carry out their responsibilities, bring actions against polluters on behalf of the public, and prosecute criminal violations of the law. Attorneys for NGOs often bring cases to prevent or control pollution in the absence of action by prosecutors (though in Brazil the Ministerio Publico will continue such a case even if the NGO drops out of the case). Expert witnesses are often critical in helping judges understand the scientific and technological issues involved in pollution cases. Experts can examine the technical data and provide the judge with an evaluation of the meaning and significance of the evidence. This crucial role means that expert witnesses must be carefully selected for their qualifications and reliability. Although some courts rely on advocates for each side to produce experts who may offer differing opinions about the evidence, many courts appoint independent experts to advise them on the facts without bias from the opposing sides.
Practical Examples of Role of Judiciary in Pollution Management

Box 7. Specialized Courts (Australia, Brazil, Philippines, Pakistan, Vermont, USA)

The first court specializing in environmental law was created by statute in New South Wales, Australia in 1980. The Land and Environment Court is a superior court of record that combines several judicial functions in one tribunal. It has an administrative review function whereby it reviews the merits of government decisions on planning, building, environmental, and similar matters. Non-judge experts are employed by the court to undertake this and other non-judicial roles. The court also serves the judicial function in civil and criminal enforcement of a variety of environmental laws and compensation for compulsory land acquisition and Aboriginal land claims. In addition it hears appeals from criminal convictions or sentences under environmental laws from the local trial courts. This court provides the model for specialized environmental courts; it has minimized delay for environmental cases, a major hindrance to the resolution of environmental disputes by courts of general jurisdiction in many nations; it has contributed substantially to jurisprudence on environmental law; and it has provided consistency in implementation of environmental law within its jurisdiction.

Brazil has at least four federal trial courts, two state trial courts, and one state appeals court designated as specializing in environmental issues. These courts have jurisdiction over civil, administrative, and criminal cases and thus cover the full set of environmental cases.

In January 2008, the Supreme Court of the Philippines designated 117 trial courts as special environmental courts. Of particular note is that the Philippines Judicial Academy is providing special training on environmental law to the judges of these environmental courts. Chief Justice Reynato S. Puno said “All efforts will be undertaken so that the newly designated environmental courts will be manned by ‘green judges’ — skillful judges who not only master environmental laws, but also understand the philosophy of environmentalism and ecologism.”

Pakistan’s Environmental Protection Act 1997 created Environmental Protection Tribunals (EPTs) as the final decision makers on environmental issues, including appeals of decisions by the governmental agencies established to control pollution and promote sustainable development and complaints against alleged polluters. The tribunals are composed of a chairperson and two members and are independent of the government and its environmental protection agency. Five such EPTs have been constituted covering significant areas, but not all, of the country. In 2009, the Supreme Court of Pakistan referred a public interest petition concerning pollution of a lake in Islamabad to an EPT, but first had to note that such an EPT needed to be established for the capitol.

Thailand has also established special environmental courts as a division within the court system.

The state of Vermont in the United States created an environmental tribunal in 1990 to hear appeals of orders issued and penalties assessed by the state’s natural resources agency. The court does not hear environmental damage cases between private parties, which are decided by courts of general jurisdiction.

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15 Id. at 405 – 409.
Box 8. Environmental Tribunals (US, India)

In the United States, the federal government and many states have established environmental tribunals within the executive branch of government. The U.S. Environmental Protection Agency (EPA), for example, created the Environmental Appeals Board (EAB) in 1992 to hear appeals of permit decisions by agency officials, decisions by administrative law judges on civil penalties, and other cases specified by various environmental statutes. The administrative law judges and EAB handle the majority of the large number of appeals of penalties imposed by the EPA, reducing the number of cases in the federal courts. Administrative law judges and members of the EAB are attorneys employed by the EPA and are required to follow the environmental statutes, but have a degree of independence as they are separate from the enforcement and permit decision makers.

Many U.S. states also rely on hearing examiners or administrative law judges as initial triers of fact when a person is adversely affected by a decision of the environmental agency. Some states provide greater independence by constituting an office of administrative appeals that is separate from all executive departments and handles appeals from all such departments. Final decisions by such administrative tribunals may be appealed to the courts, federal courts for decisions by the EAB and state courts for those by state tribunals. Federal law generally provides that the federal courts will only consider the evidence produced before the administrative tribunal unless the petitioner is able to convince the court that extraordinary circumstances exist. The courts exercise independent judgment on issues of law. This system has reduced the number of cases reaching the courts and provides parties the benefit of triers of fact who possess expert knowledge of the environmental laws while allowing recourse to courts to determine important legal issues.

India provides an example of how such tribunals may be ineffective because they are subject to the control of the legislative or executive branch rather than the judicial branch. India enacted the National Environmental Tribunal Act in 1995 for the purpose of establishing strict liability for damages from any accident arising from the handling of hazardous wastes and for establishing a national environmental tribunal to hear cases resulting from such accidents. Establishment of the Environmental Tribunal was made dependent on the national government appointing members, which the government has failed to do. References and Resources on Role of Judiciary in Pollution Management

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References and Resources on Role of Judiciary in Pollution Management

Guide to Global Trends in Application of Environmental Law by National Courts and Tribunals, UNEP.

ECOLEX, IUCN, FAO, and UNEP http://www.ecolex.org/start.php
IUCN Environmental Law Programme, http://www.iucn.org/about/work/programmes/environmental_law/
IUCN Academy of Environmental Law, http://www.iucnael.org/

This guidance note is part of World Bank Group publication: Getting to Green – A Sourcebook of Pollution Management Policy Tools for Growth and Competitiveness, available online at www.worldbank.org