

IV. Bilateral Obligations and Their Implementation

Introduction. The United States and Canada have a large body of bilateral obligation, commitment and cooperative practice in the management and resolution of transboundary environmental problems. Generally speaking, the essentially "closed" nature of North American environmental problems has allowed them to be effectively resolved by the two countries. Canada and the United States traditionally have taken a largely similar view towards the importance of dealing responsibly with such problems and have a shared interest in environmental protection compelled by many shared resources. Environmental problems have had their source on both sides of the border and have caused both countries to develop a comparable interest in seeking solutions. The record in resolving such questions over the years has generally been good.

Boundary Waters Treaty. Central to the success of the two countries in managing such problems is the large extent to which the means for dealing with them, and the content of their mutual obligations, have been systematized and agreed upon. The cornerstone of Canada/United States environmental relations is the 1909 Boundary Waters Treaty, which establishes certain basic obligations between the two countries for managing shared water resources. While a number of obligations are set out in the treaty, Article IV is directly relevant to pollution issues. It provides that:

"boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other."

Much of the environmental relationship has centered on the efforts of both countries to meet this basic mutual obligation.

The treaty also establishes an institutional means for giving effect to these obligations through the creation of the International Joint Commission; the IJC has also been charged with certain responsibilities relating to transboundary air quality problems. It is noteworthy that the fundamental commitment of both countries to the provisions of the treaty and to bilateral cooperation as the accepted means of resolving problems has made it unnecessary to utilize the provision in the treaty providing for arbitration procedures; indeed the two countries have only very occasionally resorted to arbitration in their bilateral environmental relations (as in the Trail Smelter and Gut Dam cases).

Great Lakes Water Quality Agreement. Another major agreement in which the United States and Canada made