governments. Unlike the Canadian case, however, there is very considerable, although far from complete, overlap in the areas in which power can appropriately be exercised by the federal and state authorities. As a general matter, the federal power is superior to that of the states and can preempt conflicting state enactments in areas in which the federal power may constitutionally be exercised. Although the federal power is broader when executing a treaty than in implementing a non-treaty international agreement, there is no question regarding the federal power to legislate in the field of air pollution by means of legislation such as the Clean Air Act. The existence of effective state legislation - as is required in the Clean Air Act - is, however, essential to the functioning of many federal enactments.

2. Federal Legislation - General

Air pollution in the United States is controlled mainly under the Clean Air Act. Other statutes bearing on the control of air pollution are the National Environmental Policy Act, Energy Supply and Environmental Coordination Act, Powerplant and Industrial Fuel Use Act, and a number of statutes administered by the Department of the Interior.

3. Standing from the U.S. Perspective

In addition to the provisions for government enforcement action, the U.S. legal system makes provision for actions by private parties and other entities, both in court and before the administrative agencies. While these provisions are not meant to be a substitute for state-to-state responsibility, they do constitute an important element in the U.S. system for reducing air pollution.

The single most difficult problem which would be faced by a Canadian party attempting to sue for damages or injunctive relief under U.S. law in a U.S. court would be establishing standing. While part of the standard which a Canadian would have to meet would be the same as that required of an American plaintiff (e.g., meeting the Constitutional test of "case or controversy"), it may be difficult in many cases for a Canadian party to demonstrate that he falls within the zone of interests intended to be protected by the U.S. statute concerned. It is not presumed that laws have application to non-resident aliens; the legislation and its history must be examined in each case to determine whether Congress intended to extend to non-resident aliens the right or protections offered by a particular statute. Unfortunately, the cases which address this question do not offer a reliable standard for predicting whether a statute will be interpreted to offer protection to Canadian parties.