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# MAJOR LEGISLATION

Jan. — Dec., 1993

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## 1. Constitutional and Administrative Law

### a. Constitutional Law

#### **Basic Law on the Environment.**

Promulgated on November 19, 1993. Ch. 91. Effective as of November 19, 1993.

#### ***[Background of the Legislation]***

In Japan environmental policies have been promoted by various laws and measures, especially by the Basic Law on Measures against Pollution enacted in 1967 and the Law on Preservation of the Natural Environment enacted in 1972. However, in recent years this basic framework for coping with environmental problems has been recognized as deficient as new types of environmental problem have occurred. People have recently become more sensitive to their living environment, including both the problems of local garbage and of the global environment. In addition, the 1992 Earth Summit in Rio de Janeiro emphasized the importance of developing new environmental policies to meet the demands of the times. Therefore, in

order to respond to the present problems, there has been a growing tendency toward reshaping previous environmental laws and policies. The Basic Law on the Environment was enacted with the common agreement of the need of making new legislation on the environment under these circumstances.

### *[Main Points of the Act]*

The aim of the law is to promote comprehensive and systematic measures for environmental protection, so that it may contribute to the ensuring of the healthy and cultural life of present and future people, and the serving of human welfare (Article 1).

As the basic ideas of environmental protection, the act enumerates (1) to receive and pass on the blessing of the environment (Article 3), (2) to construct the society which is less burdensome to environmental preservation and has the possibility of sustainable development (Article 4), and (3) to promote global environmental protection actively by international cooperation (Article 5). In order to realize the basic ideas, the state, local public bodies, enterprises, and citizens each have their own responsibilities (Articles 6–9).

Under the guidelines for planning and carrying out measures for environmental protection (Article 14), the act prescribes various fundamental measures such as a basic environmental program (Article 15), environmental standards (Article 16), a program for the prevention of environmental pollution (Articles 17 and 18), and so on. In particular, the state must take environmental preservation into consideration when it plans and carries out measures which are regarded as influencing the environment (Article 19), and shall take necessary steps to promote environmental impact assessments (Article 20). International cooperation for safeguarding the global environment is also prescribed (Articles 32–35).

June 5 is designated Environment Day (Article 10).

### *[Comment]*

The Basic Law on the Environment is the nation's 13th basic law. Generally speaking, a basic law is the law which clearly outlines basic schemes concerning systems or policies in the field of important

national administration and states the direction of the basic policies. Although the new law is epoch-making in restructuring the synthetic framework for the basic ideas and fundamental measures in Japan's environmental policies, there still remain some problems. First of all, the act does not specify the right of environment or the right to enjoy a natural environment. In this regard it was argued in the Diet that the basic ideas in the act made clear the recognition that a healthy and rich environment was essential to healthy and cultural human life, and that as long as the right of environment had never been recognized by the judiciary, it was important to promote measures for actualizing the basic ideas in order to ensure the new right.

The act has also been criticized for postponing the institution of the system of environmental impact assessment. Article 20 of the act only states that the state shall take necessary steps to promote the system. It was widely reported that jurisdictional disputes between government departments resulted in this incomplete provision. Departments, including the Ministry of Construction, which manage and control public utilities are thought to have defeated the Environmental Agency. Because the system of environmental impact assessment is essential to the nationwide administration of environmental protection, it is highly regrettable that the act is lacking in ensuring such a basic system. In order to construct a concrete system of assessment, further steps should be taken as soon as possible.

## **b. Administrative Law**

### **Administrative Procedure Act.**

Promulgated on November 12, 1993. Ch. 88. Effective as of October 1, 1994.

### ***[Background of the Legislation]***

In 1964 the special investigation committee on administration announced its opinion concerning the reformation of administrative procedure in order to ensure fairness of administration, and recommended that new legislation on administrative procedure should be