
PREFACE

It has been 35 years since the wave of federal statutory initiatives of the early 1970s ushered in the modern era of environmental law. Seen then as a specialized “niche” area of practice and policy, environmental law has since matured into a broad and complex body of law which, like tax law, touches many aspects of business and social relations. Today, virtually all law firms of any substantial size have practitioners, if not departments of practitioners, devoted to their clients’ environmental law needs. Many federal, state, and regional agencies and local governments also have substantial numbers of environmental attorneys to help navigate or enforce the maze of regulations. Every law school in the nation offers at least the survey course in environmental law, and many offer numerous upper level courses in the field. In short, environmental law is no longer an unusual or fringe subject—it has become a mainstream field of legal practice and policy resting on a complex array of statutes, regulations, and cases.

We have tried in this book to make environmental law come alive, to demonstrate for the student what environmental law is about and then place that subject matter in practice settings to show the range of what environmental lawyers actually experience. In teaching the environmental survey course, all three of us felt that our students could analyze well the policy aspects of environmental law, but were more guarded about their understanding of what practicing environmental law really feels like. We believe this focus of the book—making practice settings and practice problems a prominent feature for instructors and students—significantly distinguishes it from the many other commendable casebooks available on the topic of environmental law. Indeed, we would not have bothered to prepare a new addition to the array of environmental law casebooks if we did not believe ours would offer an alternative that is different in a meaningful and useful way.

Environmental law is an exciting field, and many are drawn to the dynamic subject matter—the world around us—and its rich interdisciplinary confluence of politics, economics, science, and philosophy. The design and implementation of environmental law can make a substantial difference in the quality of life for present and future generations, and each practitioner has a realistic expectation of being able to participate in that

effect. Because of its important mission, moreover, environmental law reaches across many fields of social and economic life, allowing its practitioners to interact with other professionals and to work in a variety of settings. And because the environment changes so, too, does environmental law, making its practice anything but static and monotonous. In short, practicing environmental law can be stimulating and personally rewarding.

Alas, there is another side to all of these positive qualities. As a body of law drawing from so many disciplines, environmental law can appear to have no central foundation or theme. As a body of law that so profoundly affects the quality of life today and into the future, tremendous pressure often is placed on the institutions and practitioners of environmental law. As a body of law that touches so many different walks of life, environmental law can appear fragmented and overly detailed. And as a body of law in constant flux, environmental law can appear to have no deliberate direction. In short, practicing environmental law can, on occasion, be frustrating and even personally draining. Nonetheless, we believe it is one of the most exciting and important areas of practice in the entire legal field.

Our experience includes over 25 years of combined environmental law practice, in both government, corporate, and private firm settings, and a combined 30 years of full-time law school teaching. Reflecting our practice backgrounds, this text has been specifically designed to match the modern realities of environmental law. It is our sincere hope that this feature of the book will invigorate and enrich students' introduction to the subject and encourage them to pursue careers in the fascinating, fulfilling, and important field of environmental law.

We begin with an introductory chapter, designed to provide the student's first exposure to environmental law through the experience of environmental lawyers. Using a series of case studies, this introduction emphasizes the importance of thinking about environmental law in three dimensions: (1) the basic approaches employed by environmental law; (2) the diversity of practice settings in which environmental law arises as a driving factor; and (3) the breadth of policy issues facing the future of environmental law.

Following the introductory chapter, in Part I of the book we build a conceptual foundation in the substantive law for the student with a survey of five approaches to environmental law: (1) conservation of environmental amenities; (2) regulating environmental harms; (3) remedying environmental harms; (4) planning and information programs; and (5) public lands management. Rather than attempt to canvass every environmental law, we use one or two exemplary statutes for each theme in the typology and cover related statutes and materials in sufficient detail to further illustrate the relevant approach. Deeper instruction in other statutes and legal

institutions comes in subsequent parts of the book in connection with development of the practice and policy themes rather than as discrete divisions of study.

Part II is the most innovative facet of the text, using practice settings as a way of giving life to the substantive content of environmental law. Put simply, Part II focuses on what environmental lawyers actually do. This section uses examples and problems to illustrate five key practice contexts: (1) administrative rulemaking and permitting; (2) compliance counseling; (3) enforcement; (4) private litigation; and (5) business and real estate transactions. Attention to practice settings at this breadth and level of detail is unprecedented among environmental law casebooks, and we believe it will make our text particularly useful to instructors wishing to impart some appreciation of practice challenges and to students eager to get a taste of what environmental practitioners experience.

Part III introduces the student to a series of current policy issues that are shaping the future of environmental law, including (1) ecosystem management; (2) agriculture and the environment; (3) urban development; (4) equitable environmental protection; and (5) transboundary issues. As in Part II of the book, we present these issues in real-world contexts rather than as general abstractions.

Many people and institutions provided us inspiration, support, and input along the way toward fulfilling our vision of providing an innovative environmental law text. Our respective institutions—Florida State University, the University of Notre Dame, and Duke University—and the Rocky Mountain Mineral Law Foundation provided financial and research support. Valuable comments on the approach, organization, and content of the book came from Amy Barrett, Alex Camacho, Robin Craig, Dave Markell, Joel Mintz, and Sheila Villalobos. Student research assistance was ably provided by Ali Stevens and Lucinda Lagomosina of Florida State, Stephen Leys, Carlo Rodes, and Beth Silker of Notre Dame, and Jennifer Behrens and Jonathan Hammond of Duke. A number of sections in the text were drawn from previous books we have co-authored, and we are grateful for the kind permission of Buzz Thompson, Jim Rasband, and Mark Squillace to use the material here. Steve Errick gave us early encouragement to pursue a book proposal, and John Bloomquist of Foundation Press demonstrated unyielding patience and support every step of the way. Last in our list, but by no means least in terms of our gratitude, are our respective families, each of which has invested innumerable hours in what has come to be known in our homes as “the book.”

As thankful as we are to those who helped us publish this edition, we hope to publish subsequent editions and thus will depend on and be most thankful for comments from instructors who adopt it and students who

use it. Please send us any impressions you have about scope and depth of coverage, the effectiveness of the problems as teaching tools, and the approach of different chapters. We may be reached at jruhl@law.fsu.edu, nagle.8@nd.edu, and salzman@law.duke.edu.

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