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Law and Policy

*Fifth
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ENVIRONMENTAL PROTECTION

Law and Policy

Fifth Edition

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E2010001291



Wolters Kluwer

Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

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Aspen Publishers
Attn: Order Department
PO Box 990
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-0-7355-6348-3

Library of Congress Cataloging-in-Publication Data

Environmental protection : law and policy / Robert L. Glicksman . . . [et al.] – 5th ed.
p. cm.

ISBN 978-0-7355-6348-3 (hardcover : alk. paper)
1. Environmental law—United States—Cases. I. Glicksman, Robert L.

KF3775.A7A53 2007
344.7304'6—dc22

2007007420

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To Emily, Erica, Jaclyn,
Zachary, and to Coppert and his “little girl”, Bertie

R.L.G.

To Mona, Rebecca, Jenny, and Rachel,
and to my parents, William and Elaine Markell

D.L.M.

To Lisa, Tian, and Seana, and to my parents,
John and Ellen Buzbee

W.W.B.

To Marlene

D.R.M.

To Vivien, Robert, Katherine, and Marc

A.D.T.

PREFACE TO THE FIFTH EDITION

Environmental law continues to be characterized by political ferment and corresponding legal change. Although many central cases and statutory frameworks remain stable, environmental law demands attention to statutory and regulatory amendments, changes in agency policy, and the issuance of important new cases. Regular revision of environmental law casebooks is therefore warranted. The fifth edition of this casebook has been thoroughly updated to reflect recent and proposed changes in environmental law.

Some of the changes reflect the increased importance of discrete issues or environmental problems. Chapter 6, for example, has reorganized and significantly expanded on the materials that deal with new source review (NSR) under the Clean Air Act, in light of the judicial, administrative, and legislative activity that NSR issues have generated. Chapter 6 now also includes greatly expanded coverage of global climate change in recognition of the likelihood that it will become the defining environmental challenge of our time.

Other changes to the text are broader in focus. To reflect the continuing importance of issues concerning the allocation of federal and state authority to pursue environmental protection initiatives, we have added a new chapter to the casebook, Chapter 2, on environmental federalism. Similarly, the growth of international environmental law has persuaded us that the time has come to add another new chapter, Chapter 11, which is completely devoted to this area of environmental law. Despite these two new thematic treatments, both federalism and international environmental law issues continue to crop up throughout the text.

This edition of the casebook also reflects a reorganization and expansion of the introductory material in Chapter 1. Chapter 1 now includes more extensive treatment of the common law origins and component of environmental law, as well as a consolidated and slightly expanded discussion of economic perspectives on environmental harms and regulation. We have also expanded the coverage in Chapter 4 of biodiversity-related issues, including more extensive treatment of the Endangered Species Act. Chapter 7 continues to track the efforts of EPA, the Corps of Engineers, regulated entities, and the courts to define the scope of the Clean Water Act. The Supreme Court's 2006 decision in the *Rapanos* case takes center stage there. The chapter on CERCLA (which has become Chapter 9) devotes considerable attention to the right of potentially responsible parties to seek contribution, an area thrown into chaos as a result of the Supreme Court's 2004 decision in the *Aviall* case.

In addition, we have updated the materials throughout the book, adding new principal cases and other primary documents, revising note materials, creating new problems, and making an effort to enhance clarity through devices such as visual aids. We will continue to track recent developments and make our analyses available

to casebook users both in the annual professors' updates made available by the publisher every summer and at the casebook's website, <http://web.ku.edu/~rglicks/envprot/>, which is periodically updated.

Given the dynamic nature of environmental law, it is crucial to bring new perspectives to the subject. Beginning with the third edition, the original three senior authors—Professors Anderson, Mandelker, and Tarlock—have added outstanding new co-authors, starting with the current lead co-author, Professor Robert Glicksman, and continuing with Professor David Markell, and have gradually reduced their participation in the book. The transition to a new team is almost complete.

One of the most exciting changes we make in this edition is the addition of a new co-author, William W. Buzbee, Professor of Law and Director, Environmental and Natural Law Program, at the Emory University School of Law. Bill brings to the book, aside from his vast store of energy and enthusiasm, the expertise gained from his work on environmental, land use, and litigation matters both for public interest groups and in private practice. The groundbreaking scholarship Bill has produced as a faculty member at Emory spans an enormous terrain, but it makes him a natural choice to conceive and write the book's new chapter on environmental federalism. Bill is also responsible for the restructuring and expansion of Chapter 1.

We encourage users of this casebook to forward their thoughts on and suggestions for improvements on any future editions to any of us. Our e-mail addresses are available at the casebook's website.

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January 2007

ACKNOWLEDGMENTS

Any casebook is a collaborative effort among many people. Professor Glicksman would like to thank Interim Dean Michael J. Davis and Dean Gail B. Agrawal for facilitating work on this project. Professor Markell would like to Julie Lemmer, FSU class of 2007, for assistance on Chapter 11, and Sarah Meyer, FSU class of 2007, for assistance on Chapters 7 and 10. The authors owe a particular debt of gratitude to Chris Wold and John Knox, who graciously reviewed drafts of the new chapter on international environmental law and provided useful feedback. With gratitude, we would like once again to acknowledge Carol McGeehan, our first editor, of Aspen Publishers for her support in bringing this edition to print. We also thank Eric Holt, Senior Developmental Editor at Aspen Publishers, and Katy Guimon, Project Manager at Publication Services, Inc., for helping us to navigate the publication process for the fifth edition.

The authors gratefully acknowledge the permissions granted to reproduce the following materials.

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