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ENVIRONMENTAL LAW

TEXT, CASES,
AND MATERIALS

ELIZABETH FISHER,
BETTINA LANGE,
ELOISE SCOTFORD



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Elizabeth Fisher,

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OXFORD
UNIVERSITY PRESS

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UNIVERSITY PRESS

Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

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British Library Cataloguing in Publication Data

Data available

ISBN 978-0-19-927088-0

Printed in Great Britain by
Ashford Colour Press Ltd, Gosport, Hampshire

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ENVIRONMENTAL LAW

To all students of environmental law.

PREFACE

By its very nature, a volume of Text, Cases, and Materials is a collaborative enterprise. Indeed, that is the great value of such books, but it has also meant that the writing of this textbook has been a significant intellectual and practical challenge. Its existence is due to the input and patient support of many. Thus we have many people to thank. First, the editorial team at OUP, and particularly Abbey Nelms, has been wonderfully supportive at all times. Second, we would like to thank a number of research assistants who worked on this book over the years and particularly Paolo Ronchi and Stephen Dimelow – their can-do attitude was both impressive and an enormous help to all of us in finalizing the manuscript. Third, we would like to thank the reviewers and readers of draft chapters as well as all those in the wider environmental law scholarship community who have engaged with us and our writing. The very thoughtful feedback we received from reviewers was constructive and invaluable. Likewise, much in this book reflects the vibrancy of environmental law scholarship and we hope that the book will encourage students to dig deeper into the environmental law literature.

Finally, we would like to thank each other – that might seem a ‘group-hug’ thing to do, but this book would never have come into being in its current form without the contribution of each of us. As such, this book is a collective effort and we hope more than the sum of its parts. In light of the vast expanse of environmental law, we divided up the writing of the different chapters in the following way. Fisher was responsible for chapters 1–7, 9–10, 18–21 and the Introduction to Parts II, III, and V. Lange was responsible for Chapters 8, 12, 13, 14, 17, and 22. Scotford was responsible for Chapters 11, 15 and 16. All contributed to the Introductions to Parts I and IV. This division of labour, and the different scholarly expertise we have brought to these chapters, reflects the fragmented nature of environmental law. With that said, we have each written our chapters with a view to the approaches and contents of other chapters, so there is considerable cross-referencing and cross-fertilization between them.

Liz Fisher writes: I would also like to thank the Faculty of Law and Corpus Christi College, University of Oxford for the much appreciated support they have provided over the years through funding research assistance and providing a research and teaching environment that encourages the very best. A big thank you must also go to my children, Corin and Arthur, for being their boisterous and curious selves. My most important and heartfelt thank you goes to my husband, Roderick. Writing this book has imposed much on him and I have been deeply appreciative of his loving, patient, and inspirational support (and his sense of humour).

Bettina Lange writes: I would like to thank colleagues at Oxford, including Wolfson College, for support of my academic work, Professor Bill Howarth for helpful comments on Chapter 14 (Water Pollution), Zachary Vermeer for excellent research assistance and my partner, Susan, for being lovely.

Eloise Scotford writes: I have done most of the work for this book as a Lecturer at King’s College London, so my thanks go to colleagues at King’s who read chapters and provided invaluable comments (in particular, Dr Rachael Walsh gave very helpful feedback on Chapter 6, Private Law), and who otherwise left me alone whilst I was in the depths of writing. My thanks are also owed to all those people – family, godparents and friends – with whom I spent not enough time whilst I was ‘writing the textbook’. Finally, thank you to Michael, who took me on a first date whilst my first chapter was

only half-written and put up with all the writing moments along the way with great patience, constant support and genuine interest – some of the (no doubt better) ideas about waste are the result of our discussions and emails.

Liz Fisher
Bettina Lange
Eloise Scotford
7 January 2013

ABBREVIATIONS

AB	Appellate Body
ACRE	Advisory Committee on Releases into the Environment
ACNFP	Advisory Committee on Novel Foods and Processes
AG	Advocate General
AONB	Area of Outstanding Natural Beauty
AQFD	Air Quality Framework Directive
AQMA	Air Quality Management Area
ATTAC	Association for the Taxation of Financial Transactions for the Aid of Citizens
BACNGO	Belize Alliance of Conservation Non-Government Organisations
BAT	Best Available Technique
BERR	Department for Business Enterprise and Regulatory Reform
BIS	Department of Business, Innovation and Skills
BMW	Biodegradable municipal waste
BPEO	Best Practicable Environmental Option
BREF	BAT Reference Document
BSE	Bovine spongiform encephalopathy
BT	Bacillus thuringiensis
CAFE	Clean Air for Europe Programme
CAP	Common Agricultural Policy
CBD	UN Convention on Biodiversity
CC	County Council
CCA	Climate Change Agreement
CCC	Climate Change Committee
CCL	Climate Change levy
CCS	Carbon Capture and Storage
CDM	Clean Development Mechanism
CEQ	Council of Environmental Quality
CER	Certified Emission Reduction
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act 1980
CESR	Committee of European Securities Regulators
CFC	Chlorofluorocarbons
CFI	Court of First Instance (now the General Court)
CH ₄	Methane
CIS	Common Implementation System
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CJEU	Court of Justice of the European Union
CLEA	Contaminated Land Exposure Assessment
CLTRAP	Convention on Long Range Transboundary Air Pollution
CO	Carbon monoxide
CO ₂	Carbon dioxide
COMAH	Control of Major Accidents Hazards
COP	Conference of Parties
CPR	Civil Procedure Rules

CRC	Carbon Reduction Commitment (formerly), now CRC Energy Efficiency Scheme
CROW Act	Countryside and Rights of Way Act 2000
CRU	Climatic Research Unit
DCLG	Department of Communities and Local Government
DDT	Dichlorodiphenyltrichloroethane
DECC	Department of Energy and Climate Change
DEFRA	Department of Environment, Food and Rural Affairs
DES	Department for Education and Skills
DETR	Department of Environment, Transport and Regions
DG	Directorate General
DH	Department of Health
DNA	DeoxyriboNucleic Acid
DOE(NI)	Department of Environment (Northern Ireland)
DWI	Drinking Water Inspectorate
DWP	Department for Work and Pensions
EA	Environment Agency
EA	Environmental Assessment
EAC	Environmental Audit Committee
EAP	Environmental Action Programme
EC	European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EDPR	Environmental Damage (Prevention and Remediation) Regulations 2009
EEA	European Environment Agency
EEC	European Economic Community
EFSA	European Food Safety Authority
EFTA	European Free Trade Association
EGA	Experimentalist Governance Architecture
EHO	Environmental Health Officer
EIA	Environmental Impact Assessment
EIR 2004	Environmental Information Regulations 2004
EIS	Environmental Impact Statement
ELD	Environmental Liability Directive
ELV	Emission Limit Value
ELV	End of Life Vehicles Directive
EM	Ecological Modernization
EMAS	Eco-Management and Audit Scheme
EMS	Environmental Management Standard
EoW	End-of-Waste
EP	European Parliament
EPA	Environmental Protection Act 1990
EPRs	Environmental Permitting Regulations 2010
EQS	Environmental Quality Standard
ERU	Emission Reduction Units
ERDF	European Regional Development Fund
ES	Environmental Statement
ESDN	European Sustainable Development Network

ETS	Emissions Trading Scheme
EU	European Union
EURATOM	European Atomic Energy Community
EWC	European Waste Catalogue
FCO	Foreign and Commonwealth Office
FESCO	Forum of European Securities Commissions
FIT	Feed-In-Tariff
FoE	Friends of the Earth
FofES	Friends of the Earth Scotland
FOI	Freedom of Information
FOIA	Freedom of Information Act
FSA	Food Standards Agency
FSC	Forest Stewardship Council
FTT	First Tier Tribunal
GATT	General Agreement on Tariffs and Trade 1947
GC	General Court
GCC	Global Climate Change
GDP	Gross Domestic Product
GHG	Greenhouse Gas
GMOs	Genetically Modified Organisms
GPP	Green Public Procurement
HC	House of Commons
HCBD	Hexachlorobutadiene
HFC	Hydrofluorocarbon
HM	Her Majesty's
HMT	Her Majesty's Treasury
HRA	Human Rights Act 1998
HSE	Health and Safety Executive
IA	Impact Assessment
IBA	Inventory of Important Bird Areas
IBM	International Business Machines Corporation
ICI	Imperial Chemical Industries
ICJ	International Court of Justice
ICT	Information and Communication Technologies
IED	Industrial Emissions Directive
IEF	Information Exchange Forum
IEL	International Environmental Law
IMO	International Maritime Organization
IMPEL	EU Network on the Implementation and Enforcement of Environmental Law
IPC	Infrastructure Planning Commission
IPC	Integrated Pollution Control
IPCC	Intergovernmental Panel on Climate Change
IPPC	Integrated Pollution Prevention and Control
ISO	International Standards Organization
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for Conservation of Nature
JNCC	Joint Nature Conservancy Committee
LAQM	Local Air Quality Management

LCP	Large Combustion Plants
LETS	Local Exchange Trading System
LGA	Local Government Act 1999
LGO	Local Government Ombudsman
LMO	Living Modified Organism
LNG	Liquefied Natural Gas
LNR	Local Nature Reserve
LPA	Local Planning Authority
MAFF	Ministry of Agriculture, Fisheries and Food
MARPOL	International Convention on the Prevention of Pollution from Ships
MCZ	Marine Conservation Zones
MEA	Multi-lateral Environmental Agreement
MHPA	Milford Haven Port Authority
MNR	Marine Nature Reserve
MOL	Metropolitan Open Land
MOX	Mixed Oxide Fuel
MP	Member of Parliament
MS	Member State
N ₂ O	Nitrous Oxide
NAIL	New Approaches to International Law
NAO	National Audit Office
NAP	National Allocation Plan
NAQS	National Air Quality Strategy
NDPB	Non-Departmental Government Body
NRA	National Rivers Authority
NE	Natural England
NEC	National Emissions Ceiling
NEPA	National Environmental Policy Act 1969
NERC Act	Natural Environment and Rural Communities Act 2006
NGO	Non-Governmental Organization
NH ₃	Ammonia
NIEA	Northern Ireland Environment Agency
NNR	National Nature Reserve
NO	Nitrogen Oxide
NO ₂	Nitrogen Dioxide
N ₂ O	Nitrous Oxide
NO _x	Oxides of Nitrogen
NPAC Act	National Parks and Wildlife Countryside Act 1949
NPM	New Public Management
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSDS	National Sustainable Development Strategies
NSWLEC	New South Wales Land and Environment Court
O ₃	Ozone
OECD	Organization for Economic Development and Co-operation
OMC	Open Method of Co-ordination
OPRA	Operational Risk Appraisal
ORO	Offence Response Options

OSPAR	Convention on the Protection of the Marine Environment of the North Atlantic
PAT	Phosphinothricin-Nacetyltransferase
PEFC	Pan-European Forest Certification Council
Pb	Lead
PCB	Polychlorinated Biphenyls
PCO	Protective Costs Order
PIL	Public Interest Litigation
PM-10	Particular matter of a diameter less than 10 microns
PM-2.5	Particular matter of a diameter less than 2.5 microns
PMEM	Post-Market Environment Monitoring plans
PO	Parliamentary and Health Services Ombudsman
POP	Persistent Organic Pollutant
PPC	Pollution Prevention and Control
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
Pt C	Part C notification under Directive 2001/18/EC.
PWD	Packaging Waste Directive
QMV	Qualified Majority Voting
RBS	Royal Bank of Scotland
RCC	Regulators' Compliance Code
RCEP	Royal Commission on Environmental Pollution
REACH	Registration, Evaluation, Authorization and Restriction of Chemical Substances
REDD	Reducing Emissions from Deforestation and Degradation
RESA	Regulatory Sanctions Act
R & D	Research and Development
RIA	Regulatory Impact Assessment
RIMAS	Research Institute for Managing Sustainability
RM	Reflexive Modernization
RNA	Ribonucleic acid
RO	Renewables Obligation
ROC	Renewables Obligation Certificate
ROMP	Review of Old Mining and Minerals Permissions
RSPB	Royal Society for the Protection of Birds
SAC	Special Area of Conservation
SCI	Sites of Community Importance
SCP/SIP	Sustainable Consumption and Production/Sustainable Industrial Production
SCR	Secondary Catalytic Reduction
SEPA	Scottish Environment Protection Agency
SET-Plan	European Strategic Energy Technology Plan
SD	Sustainable Development
SDI	Sustainable Development Indicators
SDS	EU Sustainable Development Strategy
SEA	Strategic Environmental Assessment
SEA	Single European Act Treaty
SF ₆	Sulphur Hexafluoride
SG	Sector Guidance Note
SIGGTO	Society of International Gas Tanker and Terminal Operators
SNIF	Summary Notification Information Format database

SO ₂	Sulphur Dioxide
SO _x	Oxides of Sulphur
SPA	Special Protection Area
SPS	Sanitary and Phyto-sanitary
SSSI	Site of Special Scientific Interest
STW	Severn Trent Water Authority
TA	Technical Instruction Air (Technische Anleitung Luft)
TBT	Technical Barriers to Trade
TEC	Treaty establishing the European Community
TCPA	Town and Country Planning Act 1990
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
TSAP	Thematic Strategy on Air Pollution
TWAIL	Third World Approaches to International Law
TWG	Technical Working Groups
UEA	University of East Anglia
UK	United Kingdom
UKELA	UK Environmental Law Association
UN	United Nations
UNCED	UN Convention on Environment and Development
UNCLOS	United Nations Law of the Sea Convention
UNECE	UN Economic Commission for Europe
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	UN Framework Convention on Climate Change
US	United States
VEP	Voluntary Environmental Program
VOC	Volatile Organic Compound
WA	Water Act 2003
WCAct	Wildlife and Countryside Act 1981
WDA	Welsh Development Agency
WEEE	Waste Electrical and Electronic Equipment Directive
WFD	Water Framework Directive (in Chapter 14)
WFD	Waste Framework Directive (in Chapter 16)
WFWT	Wildfowl and Wetlands Trust
WG	Working Groups
WHO	World Health Organisation
WIA	Water Industry Act
WRA	Water Resources Act
WSR	Waste Shipments Regulation
WWF-UK	World Wildlife Fund-UK
WT	Wildlife Trust
WTO	World Trade Organization

ACKNOWLEDGEMENTS TO COPYRIGHT HOLDERS

A central purpose of this book is to introduce students to the richness of environmental law discourse and scholarship. Not only do we want our readers to see the diversity and complexity of views but we also want to encourage them to read beyond this textbook. To that end, this book contains over 550 extracts from different primary and secondary sources. Throughout the book, the full citation of all material is given. Grateful acknowledgement is made to all the authors, organizations and publishers of copyright material that appears in this book including:

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Journals: American University Journal of International Law, Buffalo Environmental Law Journal, Cardozo Law Review, Colorado Journal of International Environmental Law and Policy, Columbia Law Review, Environmental Health Perspectives, Indiana Journal of Global Studies, Nottingham Law Journal, Pace Environmental Law Review, Southern California Law Review, Tulane Law Review, and Yale Journal of International Law.

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