

**ENVIRONMENTAL
POLICY LAW**

PROBLEMS, CASES, AND READINGS

SIXTH EDITION

HOLLY DOREMUS

ALBERT C. LIN

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by

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P R E F A C E

Environmental law is no longer a new field. Few people today would be surprised to learn that the law addresses a variety of environmental problems. Many attorneys consider at least a portion of their practice to be “environmental” in some sense; personal injury litigation, real estate transactions, corporate counseling and other practices all raise environmental issues. Environmental law proved its staying power in the mid-1990s, when advocates of deregulation gained a majority in Congress but were unable to significantly relax federal environmental laws.

Although it has in some respects matured over the last two decades, environmental law remains an exciting and controversial field. Environmental problems typically share a number of characteristics that complicate attempts to find legal solutions to them. Human activities can affect the environment at great distances, crossing state and international boundaries. Environmental harms often result from the combination of a number of different actions, and even different types of action, none of which would be problematic in isolation. It is frequently difficult to predict the environmental consequences of action, or even to measure them. It is equally difficult to agree on the value of environmental harm, or how it should be compared with the economic costs of preventing it. Because of the threat of irreversible or catastrophic harm, environmentalists often argue for early, precautionary, responses. On the other hand, proposals for economically costly regulation face substantial resistance where their benefits cannot be clearly demonstrated.

We take a very broad view of environmental law, encompassing the regulation of private and public land use and protection of wildlife as well as pollution control and remediation. We believe that artificially separating pollution law from the regulation of natural resources can obscure important conceptual similarities. Each instructor, of course, must determine the appropriate scope of coverage for his or her class. This casebook is designed to facilitate that kind of selection. It provides sufficient breadth for any introductory environmental or natural resources law course.

Environmental law remains highly complex. Students who aspire to practice environmental law must gain a sense of that complexity, and the confidence to address it. They must learn something of the science, economics, and philosophy used to evaluate environmental controversies. They must become familiar with regulations and the basics of administrative law, as well as statutes and judicial opinions. They must understand that state and local law, although still not as important as federal law, plays an increasingly important role as the federal courts take an increasingly restrictive view of federal powers.

At the same time, environmental law remains subject to continual modification. Although there have been few amendments to the major federal environmental statutes in the last few years, judicial opinions and regulatory changes have continued apace. Since the details will surely change, we believe it is most productive for teachers and students to focus on the larger picture. We have struck a balance by focusing in detail on those portions of the statutes covered that raise particularly interesting or important conceptual issues. Throughout, we highlight perpetual controversies such as the nature of human relationships to nature, the appropriate extent of individual control over natural resource use, and the degree of certainty needed to support regulatory intervention.

We have included in each chapter a number of problems designed to provide a concrete focus for classroom discussion. These problems help students develop and test their facility with the materials in the text and the concepts underlying those materials.

The development of such a comprehensive set of materials necessarily reflects the combined efforts of many people. Berkeley Law, the University of California, Davis, School of Law, and the William and Mary Law School provided invaluable institutional and financial support. Finally, we owe a tremendous debt to Gordon Anthon, Linh Thai, and Yanfang Tang for their patience and support during the course of this project.

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