

大学环境教育丛书

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Nancy K. Kubasek Gary S. Silverman

# Environmental Law

(Sixth Edition)

## 环境法

(第6版)



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# 出版前言

在 21 世纪之初，面临各种环境问题，人类清醒地认识到要走可持续发展之路。而发展环境教育是解决环境问题和实施可持续发展战略的根本。高等学校的环境教育，是提高新世纪建设者的环境意识，并向社会输送环境保护专门人才的重要途径。为了反映国外环境类教材的最新内容和编写风格，同时也为了提高学生阅读专业文献和获取信息的能力，我们精选了国外一些优秀的环境类教材，加以影印或翻译，组成大学环境教育丛书。所选教材均在国外被广泛采用，多数已再版，书中不仅介绍了有关概念、原理及技术方法，给出了丰富的数据，也反映了作者不同的学术观点。

我们希望这套丛书的出版能对高等院校师生和广大科技人员有所帮助，并为我国的环境教育事业作出贡献。

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2008 年 10 月

## PREFACE



When I began teaching environmental law to undergraduates in 1982, there were very few such courses offered outside of law schools. There were even fewer resources available for teaching courses to anyone other than law students. My first semester, I taught the course using one of the two available law school texts.

The next year, I began putting together my own materials, materials that over the next few years evolved into an environmental law “text” designed especially for nonlaw students that I made available to my students through a copy service. To improve the quality of the materials before attempting to publish them, I asked my colleague Dr. Gary Silverman, the director of our university’s Environmental Health Program, to write the chapters on water-quality control and management of waste and hazardous releases, areas in which he has special expertise.

The result was the first edition of *Environmental Law*, a book designed to introduce those without any legal or special scientific training to the system through which our nation attempts to preserve the environment. Although this book was written for college students at either the undergraduate or master’s level, I had hoped that it would also be useful to anyone interested in learning about our system of environmental law and that it would be a helpful reference for anyone in business who is attempting to negotiate the morass of environmental regulations that affect businesses today. From the comments that I have received from users of the book, it is clear that, in some sense, the book is meeting these goals. Readers of the book range from graduate and undergraduate students to businesspersons and ordinary citizens interested in environmental law.

Reflecting the fact that background knowledge is often important for understanding specific areas, this book provides two key types of background necessary for understanding environmental law. First, the initial chapters explain how our legal system functions in general. Second, the initial portions of the latter chapters provide the basic scientific knowledge necessary for understanding environmental law. Thus, the reader may gain a fundamental understanding of not only what the laws are but also why they are needed.

Several people helped to make the first edition of this book, and consequently this fifth edition, a reality, and I thank them for their contributions. Thorough and insightful reviews were provided by the following professors:

James Carp, Syracuse University  
William Clements, Norwich University  
Frank Cross, University of Texas

David Hoch, University of Southwestern Louisiana  
May Kieffer, Ohio University  
Richard Kunkle, The College of St. Thomas  
Patricia Tulin, University of Hartford

Their reviews led to vast improvements of the final version of the first edition of this book. In fact, it is only because of a suggestion of one of these reviewers that a very important chapter of this book was written, the chapter on energy policy and natural resource protection.

When changes in environmental law necessitated the first revision of *Environmental Law*, helpful reviews were provided by Paula C. Murray, of the University of Texas, and Eric Oates, of the Wharton School. Numerous changes were made in response to their comments.

Reviewers were once again helpful when it came to the third edition of this text. I once again thank the following professors for their helpful insights:

Donald A. Fuller, University of Central Florida  
Mary Keifer, Ohio University  
Michael Magasin, Pepperdine University  
Michael A. Tessitore, University of Florida

Perhaps the most significant contributor to the third edition was Carrie Williamson, a former environmental law student and my research assistant at the time of the third revision. Having used the book in class, she was able to point out places where it was unclear and make suggestions for its improvement. She also spent numerous hours doing research to ensure that the edition contained the most up-to-date figures possible at the time of publication. Finally, she contributed to the improvement of the book by drafting essays featured in the new "Thinking Critically About Issues in Environmental Law" section. Her assistance on this revision was invaluable.

With the fourth edition of this text, the former Chapter 9, Natural Resources and Energy Policy, was divided into two separate chapters to allow expansion of both of these areas. Many users were saying that they would like to devote more time to natural resource issues and the energy crisis of 2001 certainly stimulated growing interest in energy issues. Many questions, such as whether we should build more nuclear power plants, were considered nonissues in the 1990s but were being hotly debated as the fourth edition went into press and continued to be on the front burner as the fifth edition was being written.

Special credit for the improvements in the fourth edition goes to my former assistant, Anne Hardenbergh. A former student in my environmental law class, she used her experience with the book as a student to suggest areas of improvement. She also helped to upgrade the quality and number of Web sites at the end of each chapter. Many users of the book sent in suggestions that helped improve the fourth edition, but three stand out for their unusually valuable contributions: Thomas Ostrom, Mike Eckhoff, and Lester Lindley.

As with previous editions, many of the improvements in this fifth edition came from suggestions of users and readers of the text, and their

contributions are invaluable. Reviewers who made helpful suggestions for this edition included:

Craig Collins, University of California at Davis  
 Timothy Dixon, Nova Southeastern University  
 Debora Halbert, Otterbein College  
 Laurel Phoenix, the University of Wisconsin at Green Bay  
 Alex Sauders, Central Carolina Technical College  
 Jefferey M. Sellers, University of Southern California  
 Dennis Nettiksimmons, University of Montana

My research assistant, and future lawyer, Alex Frondorf, did extensive research for the fifth edition, as well as all of the individuals at Pearson Prentice Hall who helped to pull this edition together: Alana Bradley, my editor; Jane Avery, her assistant; Denise Culhane, production editor; and Colleen Franciscus, project manager. And finally, the students and professors who used the first four editions of this book and offered helpful criticisms cannot be omitted. Although they are too numerous to list by name, their contributions were invaluable.

In revising this book for the Sixth Edition, I was extremely fortunate that my former research assistant, Alex Fronforf, who did such good research for me on the Fifth Edition, was willing to work with me again on this newest edition. His contributions were invaluable. I was also assisted in this revision by two other research assistants, Daniel Tagliarina and Amanda Valentine. Again, several reviewers made useful suggestions. They include:

Christopher Robinson, Clarkson University  
 Michael Campenni, McLennan Community College  
 John Sutherlin, University of Louisiana, Monroe  
 Mark Imperial, University of North Carolina Wilmington  
 Britt Bailey, College of Marin  
 Leonard Champney, University of Scranton  
 Jude Benavides, University of Texas at Brownsville  
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 Susan McCabe, Kellogg Community College  
 Bonnie Alexander, Valley City State University



Peter Julovich, Ivytech Community College of Indiana  
 Romy Knittel, St Bonaventure University  
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 Rodney Clinkenbeard, Oklahoma University Health Sciences Center  
 J. Joseph Wilder, Hilbert College  
 Leverett Nelson, Loyola University: Chicago  
 Tim Eastly, Kent-Trumbull Campus  
 Wendy Scattergood, St. Norbert College  
 David Downie, Earth Institute at Columbia University  
 John McGill, York Technical College

Finally, I acknowledge the contributions of those at Prentice Hall, without whom this book could not have been revised. They include: Executive Editor Steve Sartori, Project Manager Kerri Tomasso, Editorial Assistant Marybeth Ward, Production Editor Melissa Feimer.

This is the second revision of the book made during the tenure of President George W. Bush. Unfortunately, the second President Bush has turned out to be a much greater foe of the environment than most had predicted. His administration was given an “F” on the League of Conservation Voter’s 2003 Report Card for performance on environmental issues. During his first term, in conflicts between protecting the environment or protecting the timber, mining, and oil industries, the Bush Administration clearly favors the latter over the former. During his second term, as changes in the text will illustrate, his administration has continued to downplay the importance of environmental interests, although there have been a few positive changes. Just before publication of this edition, the election lost the president the control of Congress. Many see this result as meaning that, at minimum, we will not see as much reduction in environmental protection as we have seen in the recent past.

In finishing the sixth edition of this book, I realize that despite the conscientious review of all stages of the book’s production by many people, it is almost inevitable that mistakes have crept in, for which I accept responsibility. I would therefore appreciate readers’ corrections and comments as to how future editions may better achieve the goals this book is designed to attain. Please send your comments, criticisms, corrections, or suggestions to me at the Department of Legal Studies, Bowling Green State University, Bowling Green, Ohio 43403, or e-mail me at [nkubase@cba.bgsu.edu](mailto:nkubase@cba.bgsu.edu).

**Nancy K. Kubasek**



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P A R T I



AN INTRODUCTION  
TO THE LAW

A useful prelude to a functional understanding of environmental law is an appreciation of the U.S. legal system itself. The materials contained in Chapters 1 through 3 will help you gain that appreciation.