

INTRODUCTION TO ENVIRONMENTAL LAW

Harold Hickok



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PREFACE

I have written this book to try to give the nonlawyer a readable, clear explanation of environmental law. My goal has been to make this exciting but often intimidatingly technical field accessible to the general student. In the process, I have tried not to interject my own personal views. As a result, a zealot looking to this book for support for a particular view may find it disappointing. My purpose is to describe and to analyze the law as it is. I leave to others the task of proselytizing visions of how environmental law should be.

Environmental law is a remarkably new field, and one that has attracted much attention in many circles. Many people are interested in the field, both out of concerns over the issues it raises and because they would like to work in the field. Many books on environmental law are available for lawyers, but most of these are not suitable for undergraduate courses. They presume that the reader has finished college and the majority of a law school education before coming to the field of environmental law. Indeed, many of the books now in print assume that the reader is an attorney practicing in the field.

I have written this book to fill the resulting gap; to make environmental law accessible to the nonlawyer. Among the nonlawyers for whom the book is intended are students training to be legal assistants, or students studying various aspects of law in an undergraduate setting. To assist these readers, I have tried to minimize the jargon in my discussions, and to present technical issues in ways that keep them accessible.

I anticipate that this book will be used in a variety of settings, including term-, semester-, and year-long courses. To meet this variety of needs, I have divided the book according to statutory subject matter, leaving to the particular teacher the task of selecting material to fit a particular course. Chapter 1 introduces the various procedural issues that are common in the environmental law field, including standing and the standard of review. The concepts in this chapter were developed largely through judicial decisions, so the emphasis in this chapter is on the workings of the courts. This chapter establishes principles that apply to all of the remaining chapters, and will probably be useful in any course.

The remaining chapters deal with a major federal statute. Chapters 2 to 4 cover the National Environmental Policy Act, the statute that requires the federal government to follow environmental law. Chapter 5 examines the Resource Conservation and Recovery Act (RCRA), the statute that regulates the disposal of materials. Chapter 6 deals with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the vehicle for ordering cleanups of existing toxic waste sites. Chapter 7 details the Clean Water Act, the statute directed to cleaning America's waters. Chapter 8 deals with the Clean Air

Act, an attempt to make the nation's air safe for everyone. Chapters 9 through 11 deal with three lesser environmental acts: the Federal Insecticide, Fungicide, and Rodenticide Act; the Toxic Substances Control Act; and the Endangered Species Act.

Because all of the chapters after Chapter 1 deal with material which is statutory in its origins, I have tried to provide a clear analysis of each statute. I have not set out lengthy statutory materials, though, because I have found from experience that there are few ways to lose readers more effectively than asking them to slog through statutes.

Even though this field is primarily statutory in origin, environmental law has been shaped and reshaped by the courts. To show this, I have included a number of cases on each statute, interspersed throughout the discussion. These are intended to illustrate various points discussed in the text. I have tried to set these up so that a teacher who wishes to use them can do so without undue difficulty, but so that the teacher who elects to forego them will still have a complete text.

Both a running glossary, throughout each of the chapters, and a cumulative glossary, at the end of the book, help students keep track of terms in this acronym-laden field. Terms marked with a dagger are from *Ballentine's Legal Dictionary and Thesaurus*; these provide standard, general definitions to give the student a grounding in typical legal terminology. More subject-specific definitions, tailored by the author for the context of this book, will also aid students.

Of necessity, I have not tried to write a comprehensive study. I have left out some issues surrounding the statutes that were covered, and I have entirely excluded state environmental laws and international law questions. I have also covered only the statutes that I feel represent the most important environmental laws.

Environmental Law and Politics

I planned this text and wrote the initial drafts before the 1994 elections. Several times since then I have been asked how the book could remain current in light of the changing of the political guard. The 1994 elections brought new faces onto the political scene, but this has not changed the fact that we have become, to use Marshall McLuhan's phrase, a global village. Indeed, I have been impressed by the modesty of the proposals to revamp the various environmental statutes. Beneath the posturing and cant of the new political situation, our political leaders of all factions have shown that they are profoundly aware that environmental problems are serious.

The new political situation appears to bear out a theme I have tried to develop in these materials: when we as a nation consider environmental problems, we are like a great tribe coming together. At different times, different factions will predominate, to be superseded later by other factions. If our political system is to stay together, factional predominance must never outweigh the need to preserve the sanctity of the tribe as a whole. Factional predominance

must never fall to factional exclusion. The awareness of this need to hold the social order together appears stronger than any desire for immediate political change. If that holds true, I expect modification rather than any effort at out-and-out repeal of environmental laws.

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Of the many lawyers from whom I have learned so much, one warrants my special thanks: The Honorable Matthew J. Perry of the United States District Court for the District of South Carolina. My understanding of law has been profoundly enriched through my associations with this distinguished counselor.

Several people reviewed various portions of the manuscript and offered a wide range of patient and perceptive comments. I am grateful for the improvements they suggested. The remaining errors are, of course, mine alone.

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Last among these, but foremost in my heart, my wife, Patricia Ann Haim, has borne the writing of this book with loving patience. To her especially, I trust that these pages offer a measure of thanks for her support through the process.

To the student, then, this book is an attempt to introduce the fascinating field of environmental law. I have tried to let the law speak for itself. If a student using this book comes away with an increased understanding and awareness of the power of the rule of law as a means of addressing complex problems, I will regard it as a measure of the book's success and my own.

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