

LEGAL PROTECTION OF THE ENVIRONMENT

Second Edition

Craig N. Johnston
William F. Funk
Victor B. Flatt

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LEGAL PROTECTION OF THE ENVIRONMENT

Second Edition

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To my wife, Jane, and children, Michael, Alison and Dan

*To Judge James Oakes,
who first taught me environmental law*

and

For Oscar

*

Preface

There is too much environmental law to be captured in any one book or course. Thus, every environmental law book must make choices about what to cover and what not to cover, what to emphasize and what not to emphasize. This book tries to cover the broad range of federal environmental law—the law that protects the environment.

It emphasizes a small number of federal statutes:

- the National Environmental Policy Act (NEPA), because it continues to play a major role in governing how federal agencies must act when they affect the environment, and it generates a significant amount of litigation brought by environmental groups;
- the Clean Water Act (CWA), the Clean Air Act (CAA), and the Resource Conservation and Recovery Act (RCRA), because they are the trinity of federal regulatory statutes that are intended to protect the water, the air, and the ground, respectively, from polluting activities;
- the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), because it is a relatively unique remedial statute and one that has had massive impacts on the management of hazardous wastes; and
- the Endangered Species Act, because it is the most uncompromising federal environmental statute, has raised a number of problems in its implementation, and generates a large amount of litigation.

Most of these statutes have enforcement provisions by which governmental authorities or citizens can enforce the statutory or regulatory requirements on violators. This will be another area of emphasis.

This is a lot, so there must be things that are left out. Primarily what is left out is discussion of the theoretical and policy issues that underlie environmental statutes and their implementation in regulations. The authors are not averse to those issues, but the focus of this book is to portray the current status of environmental law. The introductory chapter will provide a short introduction to the primary theoretical and policy issues, but an in-depth appraisal we leave to an upper level course.

This book also limits its coverage of the constitutional, administrative, and common law aspects of environmental law as separate areas of study. Again, these are important, and the introductory chapter provides material on those subjects, but we leave fuller discussion of these matters to courses in constitutional law, administrative law, and torts.

Nevertheless, each of these subjects, and especially administrative law, can become inextricably intertwined with substantive environmental law, the practice of which almost invariably involves the work of administrative agencies. Consequently, in the course of the various chapters on different environmental law topics there will be some substantial exposure to these topics.

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*

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