

大学环境教育丛书

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Nancy K. Kubasek Gary S. Silverman

Environmental Law

(Fourth Edition)

环 境 法

(第4版)



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出版前言

在 21 世纪初, 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, 我们精选了一些国外优秀的环境类教材, 组成大学环境教育丛书影印版和翻译版, 本书即为其中的一册。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, 还反映了作者不同的学术观点。

我们希望这套丛书能对高等院校师生和广大科技人员有所帮助, 同时为我国环境教育的发展作出贡献。

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2003 年 7 月

PREFACE TO THE FOURTH EDITION



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 "textbook" 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 fourth edition, a reality, and I would like to 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 this third edition of the book. I would like to 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 for a 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 this edition contained the most up-to-date figures possible at the time of publication. Finally, she contributed to the improvement of this book by drafting essays featured in the "Controversial Issues" sections. Her assistance on this revision was invaluable.

As in past revisions, the students and professors who used the first three editions of this book and offered helpful criticisms, cannot be omitted. Although they are too numerous to list by name, their contributions were invaluable.

The widespread adoptions of the first three editions of this book for a broad range of undergraduate and graduate courses leads me to believe that the first three editions went a long way toward satisfying the need for a basic introduction to environmental law. I realize, however, that there is always room for improvement, and so I tried to revise this edition in a manner consistent with suggestions from users of those early editions. Although the basic structure remains the same as that of the third edition, I have made one significant change. The former Chapter 9, "Natural Resources and Energy Policy," has been 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 resources issues, and the new energy crisis of 2001 certainly has stimulated a growing interest in energy issues. Many questions, such as "Should we build more nuclear power plants?" were considered nonissues in the 1990s, but today such questions are being hotly debated, and this textbook should enable readers to be active participants in these debates.

I would like to give special credit for the improvements in this edition to my current 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, and did extensive work updating many of the chapters. She also helped to upgrade the quality and number of Web sites at the end of each chapter. So much environmental information is available on the Internet today that I would feel remiss if I did not provide the reader with some of the more helpful sites. Obviously, some of the sites may change over time, but I tried to incorporate the sites I felt would be of longer duration. If you know of any additional sites that would be of value to readers, I would appreciate your passing them on to me so that I can include them in future editions.

Finally, I would like to thank some of my users and readers who sent me helpful suggestions. Five such individuals whose suggestions were especially helpful stand out: Dennis Card, Lester Lindley, Mike Eckhoff, Mary Niez, and Thomas Ostrom. Thanks to Professor Lindley, this edition will have a more comprehensive case and statutory supplement to accompany it. Thanks also to Mark Cordano, Attorney Brad Tupi, and Irene Dinning, for the environmental case “BoldNu’s Potential Acquisition of PPC,” which they have allowed us to make available to adopters of the text.

In finishing the fourth edition of this book, I realize that in spite of 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.

The fourth revision of this book was finished at a time when it was starting to look as if many of the strides that we have made in environmental law were going to be reduced. Headlines such as “Bush Declares War on the Environment” were appearing during months before this edition was turned in. However, just before the manuscript was finished, the administration seemed to be recognizing that they were not going to be able to modify every environmental protection without protest. So they had backed off a little in terms of what had initially appeared to be an aggressive policy of retracting most of the orders designed to protect the environment that had been issued near the end of President Clinton’s last term in office. I can only hope that some of the dire predictions of commentators turn out to be incorrect, and that the first decade of the new millennium does not turn out to be a decade of devolution of environmental protection.

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.

