

# **Environmental Enforcement**

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# Environmental Enforcement

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## Cases and Materials

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*To my wonderful, loving family, my kind and talented friends,  
and my late friends David, Doug, Barbara, Marty, and Larry.  
May memories of the latter be a blessing to all.*  
Joel Mintz

*To my parents, for being such great teachers*  
Clifford Rechtschaffen

*To Jackie, Ricky & Christine*  
Robert Kuehn



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# Preface

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Over the past thirty-five years, the United States has created a far-reaching and complex regulatory system for protecting the environment. At the heart of this system lies enforcement. It is vital to ensuring that the goals of our environmental statutes are realized in practice and are not simply words on paper. Literally thousands of attorneys in government, private practice, and public interest organizations are involved in environmental enforcement issues in their practices. Yet enforcement issues often are given only limited attention in traditional environmental and natural resource law casebooks.

This book seeks to remedy this shortcoming. It is the first casebook devoted exclusively to environmental enforcement issues and it is designed to provide students with exposure to the full range of legal issues and practical challenges they will face in handling enforcement cases. It covers all of the major areas of enforcement: government investigation and information gathering; administrative, civil, criminal, and citizen enforcement; and liability for contaminated waste sites. The book also explores a range of interesting and emerging policy issues, including the theories underlying the various models of environmental enforcement, the appropriate roles of federal and state governments in enforcement, the growing use of compliance incentives and assistance programs in lieu of traditional enforcement activities, and other alternative enforcement strategies, such as permit bars, spotlighting techniques, and common law remedies. The book is designed for a single semester course taught either as a seminar or as a more traditional lecture course. It also can serve as a supplement to existing survey courses in environmental, natural resources, or administrative law.

This book does not require previous coursework or background in environmental law and it does not presume familiarity with this subject matter. The materials in the book focus on the “enforcement” issues raised in cases, regulations, policies, and scholarly articles, rather than the underlying substantive law. In some instances, however, a strict division between the two is not possible. For example, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is a liability-based statute. Thus, chapter 5, which covers waste site liability, explores a number of issues relating to when parties are liable for cost recovery under CERCLA. We also have tried not to replicate too much material that is included in general environmental or natural resource law casebooks, although obviously there is some overlap with key cases. For example, in our chapter on citizen enforcement, we do not cover citizen suits against government agencies for failure to carry out mandatory duties or to challenge agency decisions, because this topic is covered in detail in many environmental and administrative law casebooks.

Many of the cases and articles in the book involve enforcement of pollution control requirements by the U.S. Environmental Protection Agency (about which the most has been written), although we also include materials on the enforcement of natural re-

sources and wildlife laws and state environmental enforcement. The principles and themes that emerge from these materials, however, extend far beyond their immediate context and are applicable to a range of regulatory and administrative areas.

A note on the editing conventions we use. In general, we have omitted footnotes and other references from excerpted materials. We left in citations from case excerpts that are directly discussed by the court or that we believe are important to understand the opinion. The few case footnotes that are included are numbered as they appear in the original opinions. We have indicated text omitted from the original sources with three periods separated by a space, and material that we have added by using brackets [ ].

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