

# **A Practical Introduction to Environmental Law**



# A Practical Introduction to Environmental Law

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For my grandsons, Sam and Karl, and future generations.

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For Becky, Tess, and Ethan, and all who will inherit this world.

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To the memory of Jack and Annette, who made sure that their children received the education that they themselves were denied, and for Jenny, in gratitude for her constant love and support.

S.C.G.

For Skyler, Max, and the planet they will one day share with their children.

K.R.

For Olivia and Julian, as always; *para Angelica, el comienzo...*

C.V.



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# Preface

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For many people Environmental Law is a difficult subject to learn—and to teach—yet fascinating, engaging, and satisfying to practice. This book is intended to make the subject accessible for the beginning student, and less burdensome for the instructor, while providing a fair sampling of the practical challenges faced by environmental attorneys. Its five co-authors and contributing author have all had significant experience in environmental practice as well as in teaching the subject. We have included practice problems throughout the book that reflect our own practice and classroom teaching experiences and those of others. That emphasis is obviously reflected in the title of the book. It is, indeed, a “practical” introduction.

In some respects, this book includes basic topics covered by other casebooks in the field. After providing an introduction grounded in a varied set of the philosophies and perspectives that undergird the field, the book considers some administrative law doctrines particularly relevant to Environmental Law. It then surveys a number of the statutes, regulations, and judicial opinions widely seen as the “canon” of the field. Thus, it focuses in turn on such fundamental legislative enactments as the National Environmental Policy Act, the Endangered Species Act, the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, CERCLA (or Superfund), the Federal Insecticide, Fungicide and Rodenticide Act, and the Toxic Substances Control Act, and a selection of the key judicial opinions and regulations those major statutes have spawned.

At the same time, however, this book differs from other casebooks in important respects. Beyond its practice problem orientation, we have included substantive coverage of environmental permitting—a facet of practice often engaged in by environmental lawyers. We have also included considerable material on the immense global challenges of climate change resulting from human emissions of greenhouse gasses, for which there is a striking and regrettable paucity of federal law. We focus therefore on various scientific and policy aspects of the issue, which we believe is in urgent need of both mitigation and adaptation. This book also pays more attention than most other textbooks to enforcement, a crucial aspect of environmental regulation; and it treats the most crucial components of the important amendments to the Toxic Substances Control Act passed by Congress in 2016.

An explanation of the editing conventions we have employed seems in order. Nearly all of the judicial opinions, passages from books and articles, and other materials included in this work have been edited for the sake of brevity and clarity. Although some dissenting and concurring judicial opinions have been included in part or whole, others have been entirely omitted. We have also edited out selected language and citations from published decisions and other materials. Where materials in original texts were not included we have indicated this by adding ellipses immediately before the excised materials. We also sometimes added words, phrases or brief summaries of extended passages that otherwise were omitted. These editor—added materials are surrounded in the text by brackets.

As this book goes to press, Environmental Law has entered a period of tumult and potential change. The precise nature and full extent of that change cannot now be predicted. We plan to carefully follow any and all significant changes in the field and to supplement this book as frequently as necessary to reflect them.

The co-authors have enjoyed working together to produce this book and we have learned much from one another in the process. We believe that competent environmental lawyers are now needed more than ever. We earnestly hope that this book will provide a valuable tool for effective instruction, and a useful foundation for the training of ethical, knowledgeable, and effective environmental lawyers. Much will be at stake in their professional efforts.

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John C. Dernbach  
Steve C. Gold  
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Clifford Villa  
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