

# Understanding Environmental Law

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# Understanding Environmental Law

FOURTH EDITION

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*To my children, Kevin and Alanna, who, everyday, make  
everything worthwhile, and to my wife Mary.*

— Kevin A. Reilly

*To Mary, Bill, and Matt.*

— Philip Weinberg





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# Preface to the Fourth Edition

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This fourth edition of *Understanding Environmental Law* is being prepared a quarter century after Professor Philip Weinberg, a generous friend since my law student days, asked me to co-author this book with him. Philip Weinberg had already achieved an eminent reputation as a young lawyer in the young but growing field of Environmental Law in New York, which he had helped to shape in government service before departing to teach law. Interestingly, Phil's call to me in 1996 was about a quarter century after some of the formative federal environmental laws addressed in this book were enacted, some a bit earlier and some amendments a bit later, but I think that the early 1970s can be looked back on as a seminal period in the history of Environmental Law. So, a half century later, Environmental Law has moved from novelty to mainstream. It has invaded countless once-staid traditional legal realms, among them real estate and banking, corporate transactions and securities law, land use planning and local governance, and it has partnered with public health policies; it has grafted on a new branch of administrative law, coopted or supplemented many traditional common law remedies when pollution caused injury or crossed boundaries, and has initiated new constitutional inquiries and occasionally required a reconsideration of seemingly settled principles of constitutional law. However, beyond this, the practice of environmental law often draws upon various subfields of civil engineering, hydrology, biology, chemistry, physics, other sciences, land use, demographics, economics, and so on. Increasingly, climate science and debates over its policies, extant and proposed, have been crowding their way onto the public and the political radar screens. Moreover, federal Environmental Law, which is the focus of this book, has parented numerous and sundry laws among the fifty states with countless land use ramifications at more local levels. And, of course, environmental lawyers will often have to be in close contact with local officials and remain familiar with the nuances of local landscapes, economic as well as natural. It can be fascinating, but it can also be challenging. Environmental Law, it is safe to say, has become a very complicated and comprehensive body of statutes, regulations and policies, and by the third decade of the 21st century, it demands acknowledgment as a significant branch of American jurisprudence.

This book is intended to serve as a primer for lawyers or even law students who hope to get a handle on how the field's major statutes and agency regulations work, and how they have been reshaped over the years to be more effective and, often, to address new urgencies. The goal is to outline basic principles, avoid excessive details that are more appropriate for a treatise, yet to provide sufficient depth where necessary so that the reader can achieve an adequate understanding — the ambition is set forth

in the book's title itself—of what these statutes are expected to achieve and how they operate towards that end. Hopefully, readers will find this book helpful in undertaking their introduction to the field.

Readers who have used earlier editions of this book should be aware that parts of Chapters 9, 12, 13 and 14 have been substantially revised to reflect developments in the law. Lesser portions of Chapters 5 and 6 have been updated to address recently evolving policies and jurisprudence. Chapter 7 pertains to hazardous wastes, an actively litigated area, as to which lawyers will want to pay continuing attention to some of its subtopics.

Kevin Anthony Reilly

# Preface to the First Edition

---

As the historian Barbara Tuchman sagely observed, “the best book is a collaboration between author and reader.”\* We have endeavored to keep our end of the bargain by furnishing students and practitioners with a concise, direct introduction to the burgeoning field of environmental law.

Environmental law, an increasingly significant area of legal study and practice, encompasses a full range of issues from tort law through property law to constitutional considerations. This volume attempts to present this mosaic, as its title suggests, in an understandable way. We have tried to avoid either undue concentration on the individual titles or an equally inappropriate focus on generalities.

The book covers not only the traditional terrain of air and water quality, solid and hazardous waste, and pesticides, but also the environmental implications of land use, energy generation and use, and the increasingly important area of international environmental law. It also tries to connect environmental law with the political and constitutional bases for the statutes and court decisions it examines.

Environmental law does not presuppose a background in science, and the references in this book to chemistry, biology and hydrogeology are kept simple and, we hope, understandable—a task rendered easier by the authors’ own lack of scientific expertise.

As the reader will see, environmental law was not born fully-grown, like Botticelli’s Venus, with the advent of the modern regulatory statutes. It stems from tort law, property law and related concepts that trace their roots to the common law. This book attempts to relate those common-law principles to today’s regulatory framework, from which modern environmental law directly descends.

Readers should know that Kevin Reilly wrote chapters seven and fourteen and the bulk of chapters five, six, and eight. Philip Weinberg wrote chapters one through four and nine through thirteen, as well as minor portions of chapters five, six, and eight.

We earnestly hope this book will prove useful to the reader in achieving precisely what its title proffers: understanding environmental law.

Philip Weinberg  
Kevin A. Reilly

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\* BARBARA TUCHMAN, *PRACTICING HISTORY* 24.

