

# Environmental Law Practice



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## *Problems and Exercises for Skills Development*

FIFTH EDITION

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*To my marvelous wife, Susan, and my wonderful parents.*

JLA

*To my beautiful children, Adam and Claudia.*

NMS

*To my wife Suzanne, who encourages me to pursue my dreams; and  
to my parents, who introduced me to writing and the law.*

DDH



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# Glossary of Abbreviations

ABA	American Bar Association
ACE	Army Corps of Engineers (also USACE)
ALJ	Administrative Law Judge
AO	Administrative Order
AOC	Administrative Order on Consent
ANPRM	Advance Notice of Proposed Rulemaking
APA	Administrative Procedure Act
ARAR	Applicable or Relevant and Appropriate Requirement (CERCLA)
BAT	Best Available Technology
BCT	Best Conventional Technology
BPT	Best Practicable Technology
CAA	Clean Air Act
CBI	Confidential Business Information (FOIA)
CERCLA	Comprehensive Emergency Response, Compensation and Liability Act (a/k/a Superfund)
CFR	Code of Federal Regulations
CGL	Comprehensive General Liability insurance policy
CROMERR	Cross-Media Electronic Reporting Regulation
CROP	Consolidated Rules of Practice
CWA	Clean Water Act
DMR	Discharge Monitoring Report (CWA)

DOI	Department of the Interior
DOJ	Department of Justice (also USDOJ)
DOT	Department of Transportation
EA	Environmental Assessment (NEPA)
EAB	Environmental Appeals Board (EPA)
EAJA	Equal Access to Justice Act
EBE	Environmentally Beneficial Expenditure
ECHO	Environmental Compliance and History Online
ECOS	Environmental Council of the States
EHS	Extremely Hazardous Substance (EPCRA)
EIS	Environmental Impact Statement (NEPA)
EJ	Environmental Justice
ENRD	Environmental and Natural Resources Division (DOJ)
EPCRA	Emergency Planning and Community Right-to-Know Act
EPA	Environmental Protection Agency
ERP	Enforcement Response Policy
FIFRA	Federal Insecticide Fungicide and Rodenticide Act
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact (NEPA)
FR	Federal Register
FS	Feasibility Study (CERCLA)
FWS	Fish and Wildlife Service
FY	Fiscal Year
HRS	Hazard Ranking System (CERCLA)
LEPC	Local Emergency Planning Commission (EPCRA)
MCL	Maximum Contaminant Level (SDWA)
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MPCA	Minnesota Pollution Control Agency
MSDS	Material Safety Data Sheet
MSW	Municipal Solid Waste
NBAR	Non-binding Preliminary Allocation of Responsibility (CERCLA)

NCP	National Contingency Plan (CERCLA)
NEPA	National Environmental Protection Act
NESHAPS	National Emission Standards for Hazardous Air Pollutants (CAA)
NOAA	National Oceanic and Atmospheric Administration
NOV	Notice of Violation (a/k/a Notice of Noncompliance)
NOW	Notice of Warning
NPDES	National Pollution Discharge Elimination System (CWA)
NPL	National Priorities List (CERCLA)
NPRM	Notice of Proposed Rulemaking
NSPS	New Source Performance Standards
O&M	Operation and Maintenance
ODEQ	Oregon Department of Environmental Quality
OECA	Office of Enforcement and Compliance Assistance (EPA)
OSHA	Occupational Safety and Health Act
OU	Operable Unit (CERCLA)(sorry, Sooner fans)
PA	Preliminary Assessment (CERCLA)
PCB	Polychlorinated Biphenyls
PEMS	Predictive Emission Monitoring Systems (CAA)
PFAS	Perfluoroalkyl and polyfluoroalkyl substances
PFOA	Perfluorooctanoic acid
PFOS	Perfluorooctane sulfonate
POTW	Publicly Owned Treatment Works (CWA)
PRP	Potentially Responsible Party (CERCLA)
PSD	Prevention of Significant Deterioration (CAA)
RA	Remedial Action (CERCLA)
RCRA	Resource Conservation and Recovery Act
RD	Remedial Design (CERCLA)
RHA	River and Harbors Act of 1899
RI	Remedial Investigation (CERCLA)
ROD	Record of Decision
RQ	Reportable Quantity (EPCRA)
SDS	Safety Data Sheet (OSHA)

SDWA	Safe Drinking Water Act
SERC	State Emergency Response Commission (EPCRA)
SEP	Supplemental Environmental Project
SI	Site Investigation (CERCLA)
TPQ	Threshold Planning Quantity (EPCRA)
TSCA	Toxic Substances Control Act
USC	United States Code
USCA	United States Code Annotated
USDA	United States Department of Agriculture
USGS	United States Geological Survey (DOI)
WQBEL	Water-Quality Based Effluent Limitation (CWA)
WQS	Water Quality Standard (CWA)

# Introduction

## The Goals of the Fifth Edition

The authors of this book remember well our first days as practicing environmental lawyers. Fresh out of law school and clerkships, we set out for the library with sharpened pencils to complete our initial research assignments. We began where most law students are taught to begin, with the law reporters. But the fine interpretations of regulatory law that we needed were not to be found there. We moved on to American Jurisprudence Second, the ALRs, and the law reviews. Still nothing. Stumped, and more than a little embarrassed, we were forced to seek out more senior lawyers for guidance. Thus began our introduction to the new realm of legal materials that includes such sources as the Code of Federal Regulations, the Federal Register, the Environment Reporter, and agency guidance—the materials that environmental lawyers use most.

We also learned early on that environmental lawyers do much more than legal research (this is one of the reasons that the practice of environmental law is so much fun). They counsel clients on regulatory compliance. They bring or defend against enforcement actions. They litigate complex statutory issues and settle those cases. They initiate citizen suits. They participate in rulemaking proceedings where they argue the legal and policy merits of environmental regulations. Our practices required us to undertake many of these activities. Once again, we suffered

the rude awakening that law school had hardly touched upon, much less prepared us for, these tasks.

As environmental law professors, we were determined that our students would be better prepared for environmental law practice than we had been. We looked for a book that would introduce students to the resources that environmental lawyers use and the activities in which they routinely engage. We found that such a book did not exist.

The principal objective of this fifth edition of *Environmental Law Practice: Problems and Exercises for Skills Development* is to fill this gap. The materials in this book will introduce you to the main sources of environmental law. Some of these are contained in the book itself. In other instances, we teach you how to find them on your own.

The book also uses exercises and role plays to introduce you to the day-to-day tasks of environmental law practice. The book covers six of the principal areas of environmental law practice: compliance counseling, administrative enforcement, environmental litigation (including citizen suits), environmental policy, permitting, and settlements. It is comprehensive in its approach to these areas, providing lessons for the aspiring private lawyer, government lawyer, and public interest attorney. The book will teach you how to bring a federal enforcement action against a polluter; negotiate a Superfund settlement; prepare documents and strategy for a citizen's suit; counsel a corporation on environmental compliance; comment on an EPA proposed rule; and draft a settlement agreement, as well as develop many other relevant skills.

The problems and exercises are also good opportunities for increasing your knowledge of substantive environmental law. Environmental law consists largely of complex statutory and regulatory schemes, many of which are featured in this book. Often, the best way to learn these doctrines is to use them. More than once, we have seen it all “come together” for a student while working through an exercise in class. The book should help you to master the complexities of environmental law.

This book can serve as a stand-alone text for an upper-level course on environmental practice or as a supplement to an introductory environmental law text. Whichever way you encounter it, we hope that it provides you with a useful introduction to the practice of environmental law.