

PART ONE
IMPLEMENTATION OF ENVIRONMENTAL LAW

Chapter 1
INTRODUCTION TO THE STUDY OF LAW

- A. Sources and Types of Legal Authority**
 - 1. Five Sources of Authority**
 - a. Constitution**
 - b. Legislature**
 - c. Judiciary**
 - d. Administrative Agencies**
 - e. Executive**
 - 2. Enforcement**
 - a. Civil**
 - b. Administrative**
 - c. Criminal**
 - d. Native American Tribes**
 - Exhibit 1-1: Statute Authorizing Agency Regulations*
 - Exhibit 1-2: Regulations Enacted Pursuant to Statute*
- B. Steps in Preparing to Research a Legal Issue**
- C. Formulating a Query**
 - Assignment 1-1: Brainstorming Fact Scenarios*
- D. Primary Authority**
 - 1. Statutes**
 - Assignment 1-2: Find Your State Statutes*
 - Exhibit 1-3: Major Federal Statutes*
 - Exhibit 1-4: Organization of Statutes by Topic*
 - 2. Judicial Decisions**
 - a. Trial Courts vs. Appellate Courts**
 - Exhibit 1-5, A Thought-Provoking Dissent*
 - b. Reading Cases**
 - c. Briefing Cases**
- E. In the Field**
 - 1. Employment Opportunities**
 - Assignment 1-3: Job Search*
 - 2. Ethical Issue, Confidentiality**
 - Related Topic: Reporting Environmental Violations*
 - Assignment 1-4: Case Brief*
 - Exhibit 1-6: Federal Job Postings Requiring Knowledge Of Environmental Law*

Chapter Review

Key Terms

Review Questions

Key Terms Crossword

Case for Analysis

Chapter 2. ADMINISTRATIVE AGENCIES IN ENVIRONMENTAL LAW

A. What's it All About?

1. Federal, State, and Local Agencies

Assignment 2-1: Find State and Local Agencies

Exhibit 2-1: EPA List of Relevant Agencies

2. The Underlying Statutes

Formal vs. Informal Action

Exhibit 2-2: Enabling Act

Assignment 2-2: Find State Administrative Procedures Act

B. Rule-making

Exhibit 2-3: Notice of Proposed Rule-Making

Assignment 2-3: research CFR and Federal Register

C. Executive Functions: Investigation and Enforcement

1. Self-reporting

2. Search Warrant and Subpoena

Exhibit 2-4: NY Dept. of Health Self-Reporting Form

D. Adjudication

1. ADR in Agencies

2. Hearings

Assignment 2-4: Find State Hearing Rules

E. Judicial Review

F. Obtaining Information from Agencies

1. FOIA and Sunshine Act

Assignments 2-5: Answer questions concerning FOIA requests

2. Privacy Act and Trade Secrets Act

G. In the Field: How Far Can You Go?

Exhibit 2-5: EPA Rule Concerning Appearances at Hearings

Chapter Review

Key Terms

Review Questions

Key Terms Crossword

Case for Analysis and Assignment 2-6

Chapter 3

THE COURTS IN ENVIRONMENTAL LAW

A. Common Law Causes of Action

1. Trespass

2. Nuisance

Assignments 3-1: case brief; find nuisance or continuing trespass case, right-to-farm statute, environmental liability policy

Discussion questions

Exhibit 3-1: Tribal Law Definition of Nuisance

3. Strict Liability
4. Negligence
5. Public Trust Doctrine
6. Fraud

B. Suing the Government

1. Sovereign Immunity
2. Government Property as a Source of Pollution

Assignments 3-2: find tort claims act and lawsuit against environmental agency

C. Criminal Prosecution

D. Citizen Suits Under the Statutes

E. S.L.A.P.P Suits

Exhibit 3-2: California Anti-SLAPP Statute

F. In the Field: Attorney Fees

Assignments 3-3: find criminal case, find Anti-SLAPP law, discuss pros and cons of citizen suits

Chapter Review

Key Terms

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Key Terms Crossword

Case for Analysis

Chapter 4

THE CONSTITUTION AND THE EXECUTIVE IN ENVIRONMENTAL LAW

A. Constitutional Issues

Exhibit 4-1: United States Constitution, Amendment V

1. Federal Power

a. Commerce Clause

Exhibit 4-2: short history of “waters of the United States” controversy

Assignment 4-1: update the Rapanos case

b. Preemption

Implied

Exhibit 4-3: Summary of Supreme Court Decision, United Haulers Assoc., Inc. v. Oneida-Herkimer Solid Waste Management Authority

Express

2. Eminent Domain/Inverse Condemnation

Exhibit 4-4: eminent domain statute

Exhibit 4-5: statute requiring takings analysis

Assignment 4-2: research state law regarding takings

3. Fourth Amendment

Exhibit 4-6: United States Constitution, Amendment IV

4. Due Process and Equal Protection

Exhibit 4-7: United States Constitution, Amendment XIV

Assignment 4-3: answer questions concerning case

B. Executive Orders

Assignments 4-4: find state executive order

Exhibit 4-8: federal executive orders concerning the environment

Exhibit 4-9: presidential order concerning recycling

C. In the Field: Environmental Justice

Constitutional Issues Addressed by Executive Order

Assignment 4-5: Use EPA website to answer environmental justice questions

Chapter Review

Key Terms

Review Questions

Key Terms Crossword

Case for Analysis

Chapter 5

PROTECTION OF THE ENVIRONMENT AT THE LOCAL AND INTERNATIONAL LEVELS

A. History of and Justifications for Planning and Zoning

1. Permitted, Conditional, and Nonconforming Uses

2. Comprehensive Plans

Exhibit 5-1: sample of zoning enabling act

Assignments 5-1: find state law concerning comprehensive plans and local zoning law

3. Flaws in the Plan

4. Process of Local Regulation

Exhibit 5-2: LUBA

Assignment 5-2: find state law and answer questions concerning case

Exhibit 5-3: How Planning and Zoning Work

5. Trends in Land Use Regulation

B. International Law

1. The United Nations and Related Organizations

2. Other Organizations

Assignment 5-3: research environmental impacts of NAFTA

3. Native American Tribes

C. In the Field: Planners

Exhibits 5-4, 5-5: BLS description and job notices for planners

Chapter Review

Key Terms

Review Questions

Key Terms Crossword
Case for Analysis

Chapter 6

DUE DILIGENCE IN TRANSACTIONAL LAW

A. Due Diligence: What and Why

- 1. Secured Creditors**
- 2. Innocent Landowners and Contiguous Property Owners**
- 3. Bona Fide Prospective Purchasers**
- 4. Brownfields Programs**

Exhibit 6-1: CERCLA innocent purchaser provisions

B. Securing Protection

- 1. Terms of Contract/Lease**
- 2. Transaction Screen/Phase I Assessment**
Assignment 6-1: find mandatory disclosure law
Exhibit 6-2: the specifics—record review, interviews, site visit
- 3. Phase II / Phase III Assessment**
Reports, indemnification, insurance
- 4. Working with Environmental Assessment Reports**

C. Environmental Compliance Programs

Assignments 6-2: find state audit privilege law

D. Environmental Inspections

E. In the Field: Whistleblowers

Assignments 6-3: case questions

Chapter Review

Key Terms

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Key Terms Crossword

Case for Analysis

PART 2 STATUTES

Chapter 7

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

A. Overview

- 1. Agencies Actions that May Trigger Review**
- 2. State and Local Laws**

Exhibit 7-1: CEQA

Assignment 7-1: find state law

B. The Process

1. Classifications

Exhibit 7-2: Categorical Exclusion

2. Environmental Assessment

Assignment 7-2: examine an EA and report; questions concerning case

3. Environmental Impact Statements

a. Scoping

b. Tiering

c. Contents

d. Role of EPA

Assignment 7-3: find a NOI online

Exhibit 7-3: Environmental documents under EPA review

e. In the field: Who can work on an EIS?

C. Chapter Review

Key Terms

Review Questions

Key Terms Crossword

Case for Analysis

Chapter 8 THE AIR WE BREATHE

A. Overview of the Clean Air Act

1. Enforcement Options

Exhibit 8-1: Map of the CAA

2. Other Relevant Laws

Assignment 8-1: OSHA Requirements

Exhibit 8-2: MSDS

B. Major Sections of the CAA

1. Division of United States into Regions

Exhibit 8-3: Map of AQCRs

2. NAAQS

Exhibit 8-4: NAAQS

3. SIPs

Exhibit 8-5: SIP Table of Contents

Assignment 8-2: Research state compliance; case questions

4. Areas of Non-Attainment

Exhibit 8-6: Sample case

5. New Sources

NSPS

Exhibit 8-7: New Source Performance Standard Example

NSR

Assignment 8-3: Research new source permitting

6. Hazardous Air Pollutants

Assignment 8-4: Research NESHAPS

7. Acid Rain

Assignment 8-5: Research purchasing allowances

8. Operating Permits

Exhibit 8-8: Who Needs a Permit

Exhibit 8-9: Review, BACT, RACT, What's up With That?

9. Protection of the Stratospheric Ozone Layer

Assignment 8-6: Research on Kyoto Protocol, case questions, follow-up to Massachusetts v. EPA

Exhibit 8-10: Summary of Supreme Court decision

10. Mobile Sources

Tailpipe Emissions

Performance Standards

Fuel

Mass Transit

C. In the Field: Working with the CAA

Exhibit 8-11: Resources for Scientific Information

Exhibit 8-12: A Paralegal Deals with CAA

D. Chapter Review

Review Questions

Crossword Puzzle

Terms and Definitions

Chapter 9 Water

A. Overview: Riparian Rights and Public Trust

Exhibit 9-1: Example of Statutory Limit on Riparian Rights

B. Clean Water Act

1. Water Quality Standards

Assignment 9-1: Definitions

a. Designated Uses

Assignment 9-2: Find water quality standards, designated uses; Acronym roulette

b. Water Quality Criteria

Exhibit 9-2: Water Quality Standards

c. Monitoring

Exhibit 9-3: Top Causes of Impairment

2. National Pollutant Discharge Elimination System

Exhibit 9-4: Map of CWA

a. Individual Permits

Exhibit 9-5: Pretreatment Agreements

b. General Permits

Exhibit 9-6: Discharges Requiring a Permit/Discharges Not Requiring a Permit

c. Permit Conditions

Exhibit 9-7: Application for General Permit

d. Enforcement

Exhibit 9-8: Permitting Process, Permit Contents

- e. **Nonpoint Sources**
Assignment 9-3 Permitting Problems
- 3. **Dredge and Fill Permits**
Assignment 9-4: Find Regulatory Guidance Letter
- C. **Safe Drinking Water Act**
Assignment 9-5: Find Guidance for Water System Operators
Exhibit 9-9: Sample of Guidance for Water System Operators
- D. **Coastal Zone Management Act**
Exhibit 9-10: Map of Coastal Zone Management Programs
- E. **In the Field: Ethics and Disclosures**
Exhibit 9-11 Confidentiality Rule
- F. **Chapter Review**
Review Questions
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Terms and Definitions

Chapter 10 CERCLA, SARA, EPCRA, and TSCA

- A. **Overview CERCLA/SARA**
Exhibit 10-1: Overview of CERCLA and the NCP
 - 1. **Response Actions**
 - a. **Release**
 - b. **Hazardous Substances**
 - c. **Reporting Releases**
Assignment 10-1: Research Questions Concerning Reporting and Release
Exhibit 10-2: Hazardous Substances
Exhibit 10-3: PRPs
 - d. **Removal Actions**
 - 1) **Emergency Removals**
 - 2) **Time Critical and Non-Time Critical**
Assignment 10-2: Find PA and SI guidance documents
 - e. **Remedial Actions**
Exhibit 10-4: Map of NPL sites
 - 1) **Investigation**
 - 2) **Level of Cleanup: ARARs**
Assignment 10-3: Examine CERCLA
 - 2. **Enforcement Options**
 - a. **EPA: Enforcement First Strategy**
Exhibit 10-5: Excerpt from model consent decree
 - b. **The Not-So-Super Fund**
 - c. **Liability of PRPs and Contribution**
 - d. **Private Actions**
Assignment 10-4: Case Questions
Exhibit 10-6: Cases
- B. **Brownfields Programs**

- C. **Emergency Planning and Community Right-to-Know Act**
Assignment 10-5: State Brownfields program and TRI reports
- D. **In the Field: Limited Liability Entities and CERCLA**
Exhibit 10-7: Environmental Insurance Policy Language
- E. **Chapter Review**
Review Questions
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Terms and Definitions

Chapter 11 Solid Waste, Hazardous Waste

- A. **Overview of RCRA**
 - 1. **Definitions**
 - a. **Solid Waste**
Exhibit 11-1: 40 CFR 261.4
 - b. **Hazardous Waste**
Assignment 11-1: Research in CFR
Exhibit 11-2: Case
 - 2. **Regulation**
 - a. **Regulation of Landfills Accepting Solid Waste**
Assignment 11-2: Research state program
 - b. **Regulation of Hazardous Waste**
 - 1) **Generators and Transporters**
Exhibit 11-3: Chart of Generators
Exhibit 11-4: Manifest
 - 2) **Treatment, Storage, Disposal**
 - a) **TSDF Permits**
 - b) **Permit Conditions**
 - c) **Storage**
 - d) **Treatment**
 - e) **Disposal**
 - c. **Other Wastes**
Assignment 11-3: CFR research
 - d. **Medical Waste**
 - 3. **Underground Storage Tanks**
- B. **Toxic Substances Control Act**
 - 1. **TSCA Inventory**
 - 2. **Regulation of Chemicals**
Exhibit 11-5: TSCA § 5
 - 3. **Record-Keeping and Reporting**
 - 4. **Chemicals Posing Unreasonable Risk**
- C. **In the Field: Environmental Cleanup and Bankruptcy**
Exhibit 11-6: Case
Assignment 11-4: Case discussion
- D. **Chapter Review**
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Crossword Puzzle
Terms and Definitions

**Chapter 12 WILD THINGS, WILD PLACES: ESA, FEDERAL LAND,
AND FIFRA**

A. Overview of the Endangered Species Act

Exhibit 12-1: Categories of Endangered Species

- 1. Listing Species**
- 2. Critical Habitat**

Assignment 12-1: Research and Case Questions

Exhibit 12-2: Case

Exhibit 10-3: PRPs

- 3. Protection of Listed Species Against Takings**
 - a. Involvement by a Federal Agency**
 - b. Private Landowners**
 - 1) Prohibition on “Takes”**
 - 2) Other Violations**
 - 3) Permits**

Assignment 12-2: Research and Case Questions

Exhibit 12-3: Case

- 4. Native American Tribes and ESA**

Exhibit 12-4: Listing of Chinook Salmon

Exhibit 12-5: Structure of Department of Interior

B. Federal Lands

C. FIFRA

Exhibit 12-6: Pesticides

- 1. Registration**

Exhibit 12-7: Label Requirements

- 2. Federal Food, Drug and Cosmetic Act**

D. In the Field: Anatomy of a Listing—the Polar Bear

E. Chapter Review

Review Questions

Crossword Puzzle

Terms and Definitions