PREFACE

Learning environmental law presents a challenge. On the one hand, students are drawn to the subject by an interest in—indeed, often, a deep passion for—helping to solve pressing problems that threaten human health and the natural environment. On the other hand, environmental law is largely composed of statutes and regulations, and those statutes and regulations are often lengthy, technical, and complex. The fundamental challenge for an environmental law course, therefore, is to help students understand the often difficult materials that comprise environmental law without losing the excitement that brought them to the field.

In our experiences as environmental lawyers, however, the practice of environmental law does not have this problem. Environmental law comes alive in practice. What can seem impenetrable as a student becomes clearer and more compelling when approached through real-world problems.

For that reason, our casebook injects a practice orientation into environmental law pedagogy, hopefully making learning environmental law as interesting as practicing it. In the process, we aim to teach you the skills emphasized in a doctrinal course: learning substantive principles, reading text closely, identifying ambiguity and unresolved issues, and creating arguments that appropriately rely on relevant legal authorities. But by emphasizing the practice of environmental law, we also aim to teach you skills more often associated with experiential learning, including the integration of multiple, diverse sources of legal authority; problem-solving; fact-based advocacy; tactical judgment; and negotiation.

To accomplish these objectives, this book incorporates several distinctive attributes. Approaching the book with these attributes in mind will help you make the most of the learning opportunities they provide.

- **Practice-based exercises.** Each chapter contains a series of practice-based exercises. At the conclusion of most chapters, a longer capstone problem reinforces concepts from the chapter and provides a deeper examination of a cutting-edge environmental problem. The problems are integrative and application-oriented, illustrating how legal problems arise in the real world, how a single problem may implicate multiple legal issues, how science and economics affect environmental decision-making, and how addressing a problem may require drawing on multiple types and sources of information and authority. The problems also ask
you to think critically about the interests and values you are seeking to advance.

- **Broad range of materials.** Attorneys who practice environmental law rely on a much broader range of materials than just the leading Supreme Court cases and scholarly articles that fill most casebooks. Environmental lawyers do consult leading cases and some scholarly articles, but they also work with statutes, regulations, lower court opinions, agency orders, permits, technical reports, and guidance documents. Our casebook includes materials of all these types, giving you experience in reading and analyzing different documents. Our casebook also helps you to understand the differences among the different types of documents and the relationships between them—issues that generate many legal disputes in environmental law practice.

- **Balance of standard-setting and standard application.** Environmental law casebooks tend to focus on cases challenging EPA regulations. Most situations that environmental lawyers encounter in practice, by contrast, involve questions about how statutes and regulations apply to a particular factual scenario, and are less likely to involve purely legal questions about the validity of regulations. Our casebook includes a more equal balance between standard-setting cases and standard-application cases. Standard application also provides a useful vehicle for detailed factual analysis and advocacy, another important skill that law school may not have given you enough opportunities to develop.

Our book is organized into eight chapters. The first two chapters provide the conceptual, analytical, and historical foundation for a study of environmental law:

- Chapter 1 (Introduction) introduces the field of environmental law. It examines major themes in the field by posing a series of seven basic questions that underlie environmental policymaking: Is something happening to the environment? Should we respond? Should the response be legal? Who should respond? What legal tools should we use? What should the intensity of the response be? Upon whom should the burdens of responding (or not responding) fall?

- Chapter 2 (Background Principles) provides an overview of areas that, although not specific to environmental law, are
of central importance to understanding it. Environmental statutes were enacted against a historical backdrop of common-law torts doctrines and the structural backdrop of the Constitution. Principles and methods of statutory interpretation provide tools for interpreting environmental legislation. Because much of environmental law involves delegations of authority to administrative agencies, practicing environmental law requires an understanding of administrative law, which governs the activities of those agencies.

Each of the remaining six chapters examines a major environmental topic and the principal federal statute that addresses it:

- Chapter 3 addresses air pollution and the Clean Air Act;
- Chapter 4 addresses water pollution and the Clean Water Act;
- Chapter 5 addresses hazardous waste management and the Resource Conservation and Recovery Act (RCRA);
- Chapter 6 addresses hazardous waste site cleanup and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA);
- Chapter 7 addresses environmental impact analysis and the National Environmental Policy Act (NEPA); and
- Chapter 8 addresses biodiversity protection and the Endangered Species Act.

These chapters generally follow a common structure. They explain the environmental problem, summarize the historical developments that led to enactment of the key federal statute, examine the key components of the statutory program using practice-based exercises, and finally conclude with a capstone question. If we have succeeded in producing the casebook we set out to write, you will finish your course with an understanding of why environmental law matters and how environmental law looks in practice—and hopefully with your initial excitement and passion for environmental issues not just intact, but deepened.

As we complete the project of writing the first edition of this book, Donald Trump has just been elected President, moving environmental law into a new and uncertain phase. Much is still unknown about what the new Trump Administration will pursue as its environmental agenda, and how Congress, the courts, interest groups, states, and the public will react. Undoubtedly, however, the path that environmental law takes in this next phase will depend on a complex mix of factors, including the legislative, administrative, and judicial processes that are entailed in
both pursuing and opposing attempts to change environmental law. We hope the practice-based approach embodied in this casebook will help a new generation of lawyers confront the immense challenges of this next phase of environmental law’s history. And we hope to give you a good start on your path toward a meaningful career in a subject area that we love, and that is now as crucially important as ever.

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