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Environmental Law Handbook Book Review

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BOOK REVIEWS

ENVIRONMENTAL LAW HANDBOOK, 14th ed., Thomas F. P. Sullivan, ed., Government Institutes, Inc., Rockville, MD (1997); 587pp; \$79.00; ISBN 0-86587-560-X; hardcover.

REVIEWED BY GEORGE (ROCK) PRING*

Law books, like rivers, usually make us choose between depth or breadth. In a field where most texts choose to cover a few major laws in depth,¹ *Environmental Law Handbook* stands out. It is easily the most comprehensive single-volume on U.S. environmental laws; its 552 pages provide individual chapters on no less than fourteen of the major (and not so major) federal statutes. But, in such a complex legal area, is being called the best “single volume” damnation by faint praise? To put that question in context, *Environmental Law Handbook’s* own publishing house puts out fifteen separate books on just one law—the Clean Water Act (given only fifty-three pages in this book),² and even the in-depth books are being shoved off center stage by the multi-volume looseleaf environmental law services,³ the many Westlaw, Lexis, and CD-ROM software services, and the burgeoning “enviro” sources on the Internet.

Happily, *Environmental Law Handbook* combines its comprehensiveness with a level of detail often lacking in other, more scholarly works. For the newcomer, the student, the environmental engineer, other non-

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1. Some of the better single-volume efforts (excluding casebooks) include WILLIAM H. RODGERS, JR., *ENVIRONMENTAL LAW* (2d ed. 1994); CELIA CAMPBELL-MOHN, ET AL., *ENVIRONMENTAL LAW: FROM RESOURCES TO RECOVERY* (1993); ROGER W. FINDLEY & DANIEL A. FARBER, *ENVIRONMENTAL LAW IN A NUTSHELL* (1996); OLGA L. MOYA & ANDREW L. FONON, *FEDERAL ENVIRONMENTAL LAW: THE USER’S GUIDE* (1997); STEVEN FERREY, *ENVIRONMENTAL LAW: EXAMPLES AND EXPLANATIONS* (1997). While all good in their own ways, none of these attempts to cover as many statutes as the reviewed text.

2. *E.g.*, *CLEAN WATER HANDBOOK* (Lynn M. Gallagher & Leonard A. Miller eds., 2d ed. 1996); *NPDES PERMIT HANDBOOK* (Leonard A. Miller, et al., eds., 1992); *NPDES COMPLIANCE INSPECTION MANUAL* (3d ed. 1995); *NPDES BEST MANAGEMENT PRACTICES MANUAL* (1995); *GROUNDWATER HANDBOOK* (2d ed. 1992); THEDDA BRADDOCK & L. REED HUPPMAN, *WETLANDS: AN INTRODUCTION TO ECOLOGY, THE LAW & PERMITTING* (1995); *WATER QUALITY STANDARDS HANDBOOK* (2d ed. 1995).

3. *E.g.*, BUREAU OF NAT’L AFFAIRS, *ENVIRONMENT REPORTER*; ENVIRONMENTAL LAW INSTITUTE, *ENVIRONMENTAL LAW REPORTER*.

law professionals, even the experienced attorney venturing into a new environmental law area—this is the book to reach for first. Personally, I have found it successful as a textbook for teaching environmental law to graduate environmental engineers, as a reference for baffled law students, and as a welcome overview for co-counsel and clients.

Now in its twenty-fourth year (new editions come out about every two years), this edition is current through the end of 1996. It has as its twin goals: (1) “to give its users reliable, accurate and practical compliance information,” and, (2) to do so “in a clear, concise manner, with a minimum of legal jargon.”⁴ It succeeds in the latter, if not the former. Its sixteen chapters are written by fifteen different attorneys who are surprisingly successful (for us lawyers) at being clear and concise and, given the page limitations (each law is discussed within thirteen to fifty nine pages), at being reliable and accurate. However, since no hard-bound single volume should ever be relied on as a sole source for complete or up-to-date compliance guidance, a caveat *is* in order

The attorney-authors are drawn chiefly from the Washington D.C. environmental defense bar, giving rise to one of the book’s major weaknesses. The “regulated industry” perspective is pervasive here, which in itself would not be a fault, except that some of the chapters are so industry-loyal they fail to inform the reader of the legal positions and ethical perceptions of the government regulators or the environmentalists with whom those representing industry will have to deal. The CERCLA chapter is perhaps the premier example of this one-sidedness, deluging the reader with the party line: “roundly criticized by industry,” “draconian system,” “hinders economic growth,” “frustration over the slow pace of cleanup,” “waste of taxpayer monies,” etc. Since the author fails to present the other side(s), the reader is left to guess why the law has survived for seventeen years and, thus far, has only been strengthened by Congress and the courts. Even soap boxes have more than one side.

This one-dimensionalism also makes the first two chapters (“Fundamentals of Environmental Law” and “Enforcement and Liability”) less than successful. They focus exclusively on the “what” and the “how,” the technical nuts and bolts of environmental law—how law is made, where it can be found, judicial review, search warrants, civil and criminal penalties, etc. While they do that fairly well, they totally ignore the “why,” the reasons for (and romance of) environmental law—the history, the underlying ethics, the economics, philosophy, and policies, without which no field of law can be adequately understood, least of all this enormously political one.

The remaining chapters cover the Clean Air Act (“CAA”), Clean Water Act (“CWA”), Oil Pollution Act (“OPA”), Safe Drinking Water Act (“SDWA”), Toxic Substances Control Act (“TSCA”), Pesticides (“FIFRA”), Resource Conservation and Recovery Act (“RCRA”), Underground Storage Tanks (“UST”), Federal Facility Compliance Act (“FFCA”), National Environmental Policy Act (“NEPA”), Comprehensive

4. ENVIRONMENTAL LAW HANDBOOK at xxix.

Environmental Response, Compensation and Liability Act ("CERCLA" or "Superfund"), Emergency Planning and Community Right-to-Know Act ("EPCRA"), Pollution Prevention Act ("PPA"), and Occupational Safety and Health Act ("OSHA"). A look at several of the best chapters, and one of the worst, suggest the range in quality.

For the water bar, a number of the chapters will be of major interest, including those on the CWA, SDWA, NEPA, and CERCLA. Not surprisingly for a book focused on federal law, there is no chapter on the law of water rights *per se*, either as practiced in the western or eastern United States. However, it is surprising that there are no chapters on the Endangered Species Act or federal land-management agency laws—real deficits in a book that purports to be a comprehensive treatment of environmental law (west of Washington D.C.).

The Clean Water Act chapter is one of the best in the book. It lays a good foundation with short sections on CWA history, goals, program elements, and jurisdictional definitions. It then describes the National Pollutant Discharge Elimination System ("NPDES") permit program in some detail (almost half the chapter), including one of the more lucid explanations of performance standards in the book (the Clean Air Act chapter should be so clear!). Following that, it treats the nuances of toxic controls, pollutant trading, variances, storm water permits, thermal pollution, ocean discharges, non-point sources, 404 permits, and spills. The last ten pages of the chapter provide a surprisingly thorough look at enforcement, with some of the topics—the crucial role of citizen suits being an example—covered better than in the book's thirty-one page generic chapter dedicated to enforcement.

The CWA chapter highlights a major failing of the book. One would think the saving grace of a "nutshell" summary like this would be footnotes that would guide the reader to the many in-depth treatises, law journals, and government guidance documents available. Not so. With the exception of the CWA, NEPA, and enforcement chapters (each of which do this well), the other chapters largely fail to direct the reader to any more detailed substantive sources, *and even omit the publisher's own in-depth works!* The CERCLA, OSHA, FIFRA, FFCA, and OPA chapters include some cases and other references, but the footnotes found in the CAA, RCRA, EPCRA, and most other chapters consist chiefly of lackluster string-cites to statute or regulation sections.

The CWA chapter is not without flaws. Groundwater and the unresolved controversies over CWA's coverage of it are dismissed in a few sentences despite the fact that groundwater is covered by some state NPDES permit programs⁵ and in some cases by SDWA, RCRA, and CERCLA provisions. Cross-reference would seem to be crucial. Publicly owned treatment works ("POTWs"), combined sewers, and the 401 process are surprisingly missing. Also evident to a water lawyer is the general failure of this and other water *quality* chapters to address how these laws impact on water *quantity* issues. This eastern myopia is one of the major disap-

5. *Id.* at 114.

pointments of the book for those practicing west of the Mississippi.

Bucking that D.C. bias, the NEPA chapter is authored by prominent Denver environmental lawyer James (Skip) Spensley, who draws on his personal involvement in NEPA's enactment and development while he worked for the Administration and on the Hill in the 1960s-70s. The chapter begins with a solid overview of the policies and historical development of the Act, then quickly segues the reader to the controlling regulations, the primary focus of the "modern" NEPA lawyer (as opposed to case-law-only treatment so many texts still give it).

A most innovative and attractive aspect of the chapter is that it presents the issues from the perspective of "Strategic Approaches to NEPA Compliance," a far more integrated and useful way to explain compliance than the disconnected treatment of issues found in some other chapters. The author walks the reader through the steps in determining (or avoiding) NEPA application, EIS preparation, public involvement, international applications, environmental justice, and agency and judicial review.

Shortfalls are also apparent in the NEPA chapter. One is clearly the editor's: understanding NEPA, our first environmental law, the "Magna Carta of the environment," is a must for anyone hoping to understand the later command-control laws, and the editor should have positioned NEPA as a leadoff chapter (not twelfth after the Oil Pollution Act and Underground Storage Tanks). Another flaw is length. Although an important and complex act, NEPA is given only twenty-seven pages, half the length of the CWA, CERCLA, and TSCA chapters. Finally, there is a substantive flaw as well. The chapter really does not focus on the core of modern NEPA practice. Ponderous environmental impact statements ("EISs") are still being produced, but today's federal agencies are producing nearly one hundred environmental assessments ("EAs") for every one EIS.⁶ EAs document why the environment will not be "significantly affected" and therefore why an EIS is unnecessary. Their emergence as the dominant NEPA compliance tool of the 1990s is not mere law avoidance; unlike EISs, EAs reward agencies for investing in mitigation to reduce their environmental impacts below a significant level, a potential "win-win" for both paperwork and the environment. While the chapter has brief sections on EAs and mitigation, the two are dealt with separately instead of as the coordinated central focus of NEPA practice they have become.

Most of the other chapters in *Environmental Law Handbook* summarize their laws in reasonably complete and professional fashion. One "back-to-the-drawing-board" exception is the CERCLA/Superfund chapter. Apart from its very negative approach (surely authors can be found who do not hate their subject!), the chapter omits many of the current cutting edge issues a professional reader would want to understand. After starting with very weak history and overview sections, the chapter then

6. COUNCIL ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL QUALITY: 23RD ANNUAL REPORT 153, 162 (1993).

presents a somewhat disorganized discussion of CERCLA topics, as if going through an arbitrary checklist rather than an integrated look at compliance strategies, such as can be found in the NEPA chapter. Its discussions of the remedial planning process, liability, and CERCLA causes of action, defenses, and settlements are adequate, though hard to follow. Despite the fact that it is the second longest chapter in the book, it either omits or gives only passing mention of a surprising number of modern topics, including groundwater (the major environmental issue), non-National Priority List ("non-NPL") sites (the majority), Interim Remedial Actions ("IRAs"—emerging as a major cleanup strategy), environmental audits (an entire practice field in themselves), state law Applicable or Relevant and Appropriate Requirements (state "ARARs"—with their potential for "cadillac cleanups"), state mini-CERCLAs, lender liability avoidance, and brownfields (EPA's newest infatuation).

Overall, *Environmental Law Handbook's* strengths definitely outweigh its weaknesses. Its strengths make it the preeminent one-volume guide to the intricacies of the environmental laws, the best overall reference of its kind for a basic understanding of how the laws work. As for its weaknesses—leaving out the "why" of environmental law, inadequate references, lack of some key laws, D.C./defense bar biases, and failure to cover some cutting-edge issues—these could easily be cured in the fifteenth edition.