CONTENTS

Preface to the Ninth Edition		xxvii
Ack	'enowledgments	xxxi
CL	IAPTER I	
	IVIRONMENTAL LAW'S FOUNDATIONS	1
		1
	Problem 1-1	1
	Environmental Law's Roots and Rationales	1
	Environmentalism's Rejection of Exploitation Expectations	2
C.	Economic Perspectives on Environmental Harms and Policy Choice	4
	Problem 1-2	4
	1. Introduction: Why We Pollute	4
	Notes on the Tragedy and Environmental Policy	5
	2. The Economics Model of Environmental Problems: Key Concepts and Terms	7
	a. Key Terms	7
	b. Coase's Insights and the "Polluter Pays" Principle	9
	c. Nonuse Values and Incommensurability: Are Some Values Extrinsic or	
	Not Capable of Measurement?	11
	d. Ethics or Economics?	12
	e. Cost-Benefit Analysis and Economic Perspectives	12
	f. What If "Rational Actor" Assumptions Are Wrong? The Growing	
	Influence of Behavioral Economics	13
D.	The Environmental Lessons of Ecology	13
	Bosselman & Tarlock, The Influence of Ecological Science on	
	American Law: An Introduction	15
	Notes and Questions	17
E.	The Ethical Lessons of Ecology	18
	Notes and Questions	19
F.	Common Law, Nonstatutory, and Constitutional Remedies for	
	Environmental Harms	21
	Problem 1-3	21
	1. Negligence Claims	22
	2. Public and Private Nuisance Claims	23
	a. Public Nuisance Claims	23
	Georgia v. Tennessee Copper Co.	25
	Notes and Questions	26
	b. Private Nuisance Claims	26
	Walsh v. Town of Stonington Water Pollution Control Authority	27
	Note and Question	28
	Petsey v. Cushman	29
	Notes and Questions	31

	3. Trespass Claims	32
	4. Strict Liability Claims	33
	Branch v. Western Petroleum, Inc.	33
	Notes and Questions	36
	5. The Public Trust Doctrine	37
	National Audubon Society v. Superior Court of Alpine County	39
	Notes and Questions	40
	6. Constitutionally Rooted Environmental Claims	41
	7. Environmental Justice Theories	43
	8. The Flint, Michigan Battles	44
	Mays v. Governor of Michigan	45
	Notes and Questions	53
G.	Common Law and Other Theories During the Statutory Environmental Era	54
	International Paper Co. v. Ouellette	56
	Notes and Questions	60
	A Note Regarding Hurdles to Common Law Success	61
Н.	The Historical Arc of Environmental Law	62
	1. Reconceiving Wilderness and Natural Resource Values	63
	2. The Conservation and Preservation Movements	63
	3. The Political Emergence of the Modern Environmental Era	65
	4. A Brief Chronology of the Development of Modern Environmental Laws	
	and Political Trends	67
I.	Environmental Policy and Regulatory Design Choice	76
	1. Environmental Law Goals, Triggers, and Strategies	77
	a. Goals	77
	b. Triggers	78
	c. Regulatory Designs and Strategies	79
	2. Implementation and Enforcement Design Choice	81
	APTER II	
Eľ	NVIRONMENTAL FEDERALISM	83
	Problem 2-1	84
A.	Rationales for Federal Environmental Regulation	85
	1. Interstate Externalities	85
	2. Economies of Scale and Information	86
	3. The Race to the Bottom	86
	4. Centralization versus Decentralization	88
	5. Political, Economic, and Historical Rationales for Federal (or State) Regulation	89
	6. Using Competing Federalism Rationales	90
B.	The Question of Federal Commerce Power	90
	Gibbs v. Babbitt	91
	Notes and Questions: Power and the Analytical Framework	98
	Note on the Affordable Care Act Challenge and Federal Power to	
	Protect the Environment	102
С.	Federal Power and Interpretation: Commerce Concerns as a Tiebreaker	105
	Solid Waste Agency of Northern Cook County v. U.S. Army Corps of	
	Engineers	106
	Rapanos v. United States	107
	Notes	109

D		100
D.	Securing State Cooperation	109
	New York v. United States	109
	Notes and Questions	116
	A Note on State Sovereign Immunity	117
E.	The Power Allocation Choice: Savings Clauses, Delegated Programs, and	
	Preemption	119
	1. Savings Clauses	119
	2. Delegated Programs	121
	3. Preempting Clauses and Regulatory Actions	122
	Engine Manufacturers Association v. South Coast Air Quality	
	Management District	123
	Notes and Questions	126
	Bates v. Dow Agrosciences LLC	127
	Notes	130
	4. Preemption by Agency Declaration	134
	Notes and Questions	135
F.	Dormant Commerce Clause Limitations on State Regulation	136
	United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste	
	Management Authority	137
	Notes and Questions	140
	Rocky Mountain Farmers Union v. Corey	143
	Notes and Questions	150

CHAPTER III THE ADMINISTRATIVE LAW OF ENVIRONMENTAL PROTECTION

A. Judicial Control of Administrative Environmental Decisionmaking	154
1. Access to the Courts: Standing and Related Preclusion Doctrines	154
Sierra Club v. Morton	154
Notes and Questions	157
Lujan v. Defenders of Wildlife	160
Notes and Questions	167
Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), In	c. 172
Notes and Questions	176
Note on a Reversion to Lujan v. Defenders of Wildlife: Strengthening	
the Judicial Gatekeeping Role	178
Note on Prudential and Statutory Standing Requirements	181
Problem 3-1	183
Note on Exhaustion of Administrative Remedies, Primary Jurisdiction	n,
and Ripeness	184
Problem 3-2	186
Note on Recovery of Attorneys' Fees	187
2. Standards of Review	188
a. The Types of Reviewable Administrative Action	188
Notes and Questions	189
b. Judicial Review of Statutory Interpretation	190
Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.	190
Notes and Questions	195
Note on the Scope and Impact of Chevron Deference	197

	c. Judicial Review of Statutory Implementation	199
	Citizens to Preserve Overton Park, Inc. v. Volpe	199
	Notes and Questions	203
	Note on the Origins of Hard Look Review	205
	Note on Policy Reversals After Changes in Presidential Administrations	206
	Note on Reviewability	207
	Norton v. Southern Utah Wilderness Alliance	208
	Notes and Questions	213
В.	Congressional Control of Administrative Environmental Decisionmaking	214
	1. Control Through the Appropriations Process	214
	2. Control Through Substantive Standards and Analytical Requirements	215
C.	Executive Control of Administrative Environmental Decisionmaking	218
	Note on Cost-Benefit Analysis	221
	Problem 3-3	226
D.	Avoiding Control Through Informal Decisionmaking	226
	McGarity, The Courts and the Ossification of Rulemaking: A	
	Response to Professor Seidenfeld	227
	Notes and Questions	228
CH	APTER IV	
TH	HE NATIONAL ENVIRONMENTAL POLICY ACT	231
		-
А.	NEPA's Role in Environmental Management	231
	1. An Environmental Magna Carta	231
	Notes and Questions	232
	2. The <i>Calvert Cliffs</i> Decision: Judicial Enforcement	233
D	Notes and Questions	234
В.	When Does NEPA Apply? Exemptions, Nondiscretionary Actions, and	
	Categorical Exclusions	235
	1. Exemptions	235
	Catron County Board of Commissioners v. United States Fish and	0.05
	<i>Wildlife Service</i>	235
	Notes and Questions	238
	2. Nondiscretionary Actions	240
0	3. Categorical Exclusions	240
C.	Threshold Issues: Must an Impact Statement Be Prepared?	241
	Problem 4-1	242
	1. Is It Federal?	243
	2. Is It a Federal "Action"?	244
	3. Is It a Major Federal Action Significantly Affecting the Environment?	244
	Ocean Advocates v. United States Army Corps of Engineers	245
	Notes and Questions	250
	Note on Environmental Effects and Other Issues that Must Be	252
D	Considered in Making the Significance Decision	253
D.	If an Impact Statement Must Be Prepared, How Is It Done, and What Is Its Scope?	254
	1. How Environmental Impact Statements Are Prepared	255
	Notes and Questions	256
	Note on Statutory Exemptions from and Modifications of NEPA	257
	2. The Alternatives Requirement	257

326

	Vouus ant Vanhaa Nuslaan Dawan Cant in Natural Darauman Daharaa	
	Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.	258
	Notes and Questions	262
		262
	3. Segmentation	20)
	Florida Keys Citizens Coalition, Inc. v. United States Army Corps of	2(5
	Engineers	265
	Notes and Questions	267
	4. Regional and Program Impact Statements	267
	Kleppe v. Sierra Club	267
Б	Notes and Questions	273
E.	When Is an Environmental Impact Statement Adequate?	273
	1. The Substantive versus the Procedural Problem	273
	Notes and Questions	274
	2. What Is an "Adequate" Impact Statement?	275
	Sierra Club v. Bosworth	275
	Notes and Questions	278
	3. Cumulative Impacts	280
	Problem 4-2	280
	Sierra Club v. Federal Energy Regulatory Commission	280
	Notes and Questions	282
	4. Indirect Impacts	284
	Food & Water Watch v. Federal Energy Regulatory Commission	284
	Notes and Questions	289
	5. Mitigation	290
	Robertson v. Methow Valley Citizens Council	290
	Notes and Questions	295
	Note on State Environmental Policy Legislation	297
	IAPTER V	
BI	ODIVERSITY CONSERVATION	299
	Problem 5-1	299
А.	Introduction to Biodiversity Conservation	299
	Doremus, Patching the Ark: Improving Legal Protection of Biological	
	Diversity	301
	Note on Ecosystem Services Provision as a Rationale for Biodiversity	
	Protection	302
	Sierra Club v. Marita	303
	Notes and Questions	306
	Note on Sources of Biodiversity Conservation Law	308
B.	The Endangered Species Act	309
	1. An Overview of the Endangered Species Act	309
	Tennessee Valley Authority v. Hill	310
	Note	314
	2. Listing and Critical Habitat Designation	315
	Alaska Oil and Gas Ass'n v. Pritzker	315
	Notes and Ouestions	319

Note on Critical Habitat Designation 3. Substantive and Procedural Duties for Federal Agencies Under Section 7

National Association of Home Builders v. Defenders of Wildlife

xv

Notes and Questions	333
4. The Section 9 Taking Prohibition	337
Babbitt v. Sweet Home Chapter of Communities for a Great Oregon	338 342
Notes and Questions C. The Regulatory Taking Problem	342 344
Lucas v. South Carolina Coastal Council	344
Notes and Questions	347
Notes and Questions	54/
CHAPTER VI PROTECTING THE AIR RESOURCE	351
A. Air Pollution: Types, Sources, Impacts, and Control Techniques	352
1. Pollutants and Their Sources	352
2. Documenting the Health Effects of Air Pollution	357
3. The Evolving Mix of Emissions Sources	358
4. The State of Air Quality and Its Improvement	358
5. The Economic Impacts and Environmental Justice Implications of Air	2(0
Pollution and Air Pollution Control	360
B. The History of Air Pollution: From Common Law Nuisance to the Clean Air	
1. Beginnings	362
2. Early Legislation	362 363
 The 1970 Act Conflicting Goals 	363
5. The 1977 Amendments	364
6. The 1990 Amendments	365
C. A Summary of the Clean Air Act Today	365
Note on Protection of Indoor Air Quality	371
D. Uniform National Primary and Secondary Ambient Air Quality Standards	372
1. Establishment of the NAAQS	372
a. Listing of Criteria Pollutants	372
b. The Adoption of NAAQS	373
Coalition of Battery Recyclers Association v. EPA	374
Notes and Questions	376
Whitman v. American Trucking Associations, Inc.	377
Notes and Questions	382
American Trucking Associations, Inc. v. EPA	385
Notes and Questions	388
2. Achievement of the NAAQS Through State Implementation Plans	390
a. Designation of Air Quality Control Regions	390
b. Formulation, Approval, and Revision of SIPs	392
Union Electric Company v. EPA	392
Notes and Questions	396
Note on Tall Stacks and Other Dispersion Techniques	399
c. Monitoring and Modeling	400 " 401
Note on Continuous Emissions Monitoring and "All Credible Evider E. Nationally Uniform Emission Standards for New Sources: Controlling New	
Stationary Source Pollution by Categorical Regulation	402
F. Nonattainment Areas: The Special Problems of Dirty-Air Areas	405
1. The Scope of the Nonattainment Problem	405
Note on the Ozone and Carbon Monoxide Nonattainment Problem	406

		607
	2. Deadlines for Achieving the NAAQS	407
	3. General State Implementation Plan Requirements for Nonattainment Areas	408
	Problem 6-1	409
	4. Controlling Emissions from Stationary Sources in Nonattainment Areas	410
	a. The Scope of the New Source Review Permit Program	410
	Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.	411
	Notes and Questions	411
	New York v. EPA	412
	Notes and Questions	416
	b. The Substantive Requirements of the Nonattainment Area Permit Program	417
	Problem 6-2	418
	Citizens Against the Refinery's Effects, Inc. v. EPA	419
	Notes and Questions	420
	Notes and Questions on Bubbles, Offsets, and Other Economic	
	Incentive–Based Regulatory Techniques	422
	5. Sanctions for Failure to Comply with Nonattainment Area Requirements	428
G	Prevention of Significant Deterioration	428
u.	1. Origins and Purposes of the PSD Program	428
	2. The Current PSD Program: An Overview	429
	National Research Council of the National Academy of Sciences, On	72)
	Prevention of Significant Deterioration of Air Quality	430
		430
	Notes and Questions on the Scope of the PSD NSR Permit Program	
	Environmental Defense v. Duke Energy Corp.	433
	Notes and Questions	438
	Problem 6-3	439
	Alaska Department of Environmental Conservation v. EPA	440
	Notes and Questions	444
	Notes and Questions on the Applicability and Substantive	
	Requirements of the PSD Permit Program	445
	Note on the Application of PSD to the Set II Pollutants	447
	3. Control of Visibility Impairment	447
Н.	Motor Vehicle Emission Controls	449
	1. Vehicle Emission Standards	449
	Note on the Concept of Technology Forcing	451
	2. Controlling Emissions from Mobile Sources in Nonattainment Areas	453
	a. Vehicle Inspection and Maintenance Programs	454
	b. Gasoline Vapor Recovery	455
	c. Alternative Fuels	455
	d. Clean-Fuel Vehicles	456
	e. Transportation Controls and Related Measures	457
	f. Indirect Source Review	457
I.	Control of Other Pollutants	458
	1. Hazardous Air Pollutants	458
	Michigan v. EPA	460
	Notes and Questions	467
	NRDC v. EPA	469
	Notes and Questions	471
	2. Interstate Pollution and Acid Deposition	471
	*	472
	a. The Difficulty of Controlling Interstate Pollution	
	EPA v. EME Homer City Generation, L.P.	473

xvii

	Notes and Questions	480
	b. The Acid Deposition Controversy	482
	Clean Air Act Amendments of 1990, Report of the Committee on	
	Energy and Commerce, U.S. House of Representatives, on H.R. 3030	482
	Notes and Questions	483
	c. Emissions Trading and the Control of Acid Deposition	484
	Indianapolis Power & Light Co. v. EPA	484
	Madison Gas & Electric Co. v. EPA	485
	Notes and Questions	485
	Note on the International Implications of Acid Deposition	488
	3. Protection of Stratospheric Ozone	488
	a. The Problem of Ozone Depletion	488
	Clean Air Act Amendments of 1989	488
	Notes and Questions	489
	b. The Phase-Out of Ozone-Depleting Substances	491
J.	Facilitating Enforcement: Clean Air Act Permits	493
	Commonwealth of Virginia v. Browner	494
	Notes and Questions	497
CF	IAPTER VII	
PI	ROTECTING THE WATER RESOURCE	499
A.	Water Pollutants and the State of the Nation's Waters	499
	Notes and Questions on the Quality of Our Nation's Waters	501
B.	Background on Water Pollution Regulation	503
	1. Nineteenth-Century Water Pollution Problems and Legal Responses	503

	1. Nineteenth-Century Water Pollution Problems and Legal Responses	503
	2. The Twentieth-Century Evolution of Federal Water Pollution Control Policy	504
	a. Post Hoc Actions Against Discharges	504
	b. An Early Approach to Water Quality Standards	504
	c. The Clean Water Act: An Overview	505
	(1) Goals	505
	(2) Structure	506
C.	The CWA's NPDES Permit Program for Point Sources: Jurisdictional Boundaries	508
	1. "Navigable Waters"	508
	a. Constitutional Power to Regulate Water Pollution	508
	b. Statutory Boundaries on the Regulation of Water Pollution	508
	Solid Waste Agency of Northern Cook County v. United States Army	
	Corps of Engineers	510
	Rapanos v. United States	512
	Notes and Questions	522
	Problem 7-1	524
	2. Definition of a Point Source	524
	United States v. Plaza Health Laboratories, Inc.	525
	Notes and Questions	531
	3. Pollutant	532
	4. Addition	532
	Notes and Questions on NPDES Jurisdiction	533
	Problem 7-2	534
D.	Establishing Technology-Based Effluent Limitations	534
	1. Relevant Factors in Setting National Standards	536

	Weyerhaeuser Co. v. Costle	536
	Association of Pacific Fisheries v. EPA	541
	Notes and Questions	546
	2. Variances	548
	EPA v. National Crushed Stone Association	548
	Note on Variances	550
	Problem 7-3	550
E.	Water Quality Standards	550
	1. Theory and Current Function	550
	Notes and Questions	553
	2. Spillover Effects and Treatment of New Dischargers to Impaired Waters	554
	Arkansas v. Oklahoma	554
	Notes and Questions	560
	Problem 7-4	560
	3. The Role of TMDLs in Achieving Water Quality Standards	561
	a. Overview	561
	b. Progress to Date in Implementing the TMDL Program	561
	c. A More In-Depth Look at the TMDL Program	562
	Notes and Questions	562
	American Farm Bureau Federation v. EPA	564
	Notes and Questions	572
	4. Section 401 Certifications	572
	Oregon Natural Desert Association v. Dombeck	573
F.	Agricultural Pollution, Including CAFOs	575
G.	Municipal Treatment Operations	577
	1. A Case of Federal Subsidies: The Construction Grants Program and State	
	Revolving Funds	577
	2. Pretreatment	578
	3. Disposal of Sewage Sludge	578
	4. Stormwater: Combined Sewer Overflows (CSOs) and Sanitary Sewer Systems	579
	5. Green Infrastructure and Low Impact Development (LID) Strategies and	
	Practices	581
	Nonpoint Source Pollution	582
I.	The \$404 Program	584
	1. The Problem: From Hazard to Ecosystem	584
	2. The Allocation of Regulatory Jurisdiction	585
	3. Activities Regulated Under CWA §404	586
	Coeur Alaska, Inc. v. Southeast Alaska Conservation Council	587
	4. Substantive Criteria	592
	Northwest Environmental Defense Center v. Wood	594
•	Notes and Questions	598
J.	Watershed or "Place-Based" Approaches to Water Protection	599
	Notes and Questions	601
CH	IAPTER VIII	

CONTROLLING TOXIC SUBSTANCES AND HAZARDOUS WASTES

A.	Defining the Problem: Risk and Uncertainty	604
	1. The Nature of Environmental Risk	604

xix

	Page, A Generic View of Toxic Chemicals and Similar Risks	604
	Notes and Questions	607
	2. Risk Assessment, Risk Management, Cancer, and the Environment Adler, Against "Individual Risk": A Sympathetic Critique of Risk	608
	Assessment	608
	Notes and Questions	611
	Environmental Protection Agency, Notice of Availability; Documents Entitled Guidelines for Carcinogen Risk Assessment and	
	Supplemental Guidance for Assessing Susceptibility from Early-Life	<i></i>
	Exposure to Carcinogens	613
	Notes and Questions	619
-	Note on Animal Test Methodologies and Cancer Risk Assessments	622
В.	Risk and the Common Law	624
	Village of Wilsonville v. SCA Services, Inc.	624
	Notes and Questions	628
	Lin, The Unifying Role of Harm in Environmental Law	630
	Note on the Common Law Approach to Risk as Injury	634
	Daubert v. Merrell Dow Pharmaceuticals, Inc.	638
~	Notes and Questions	642
C.	Early Statutory Examples of Precautionary Regulation of Risk	644
	Ethyl Corp. v. EPA	645
D	Notes and Questions	646
D.	Dealing with Risk Through Comparative Risk Assessment and	(10
	Cost-Benefit Analysis	649
	1. The Rationale for Comparative Risk Assessment	649
	2. Quantitative Risk Assessment	652
	National Research Council of the National Academies, Science and	(50
	Decisions: Advancing Risk Assessment	652
	Industrial Union Department, AFL-CIO v. American Petroleum Institute	652
	Notes and Questions	658
	3. Criticisms of Comparative and Quantitative Risk Assessment	659
	4. Comparing the Costs and Benefits of Hazardous Substance Control	661
	American Textile Manufacturers Institute, Inc. v. Donovan	662
Б	Notes and Questions	664
E.	Preventing the Entry of Toxic Substances into the Stream of Commerce	666
	1. Regulation of Chemical Manufacturing and Use	667
	a. The Toxic Substances Control Act	667
	Markell, An Overview of TSCA, Its History and Key Underlying	((7
	Assumptions, and Its Place in Environmental Regulation	667
	(1) Introduction (2) The Initial Failure of TSCA	668
	(2) The Initial Failure of TSCA	669
	Corrosion Proof Fittings v. EPA	669
	Notes and Questions	674
	(3) The 2016 Amendments	675 680
	Note on Integration of TSCA with Other Regulatory Schemes Problem 8-1	681
		001
	b. Regulation of Pesticide Use: The Federal Insecticide, Fungicide, and Rodenticide Act	681
	(1) The Evolution of Pesticide Regulations: From Classic Consumer	001
	Protection to DDT	682
		002

	(2) The Current Law	683
	(a) Registration, Restricted Registration, and Re-Registration	683
	(b) Suspension, Cancellation, and Related Matters	685
	c. Regulation of Drinking Water Supplies: The Safe Drinking Water Act	688
	Chlorine Chemistry Council v. EPA	690
		692
	Notes and Questions Problem 8-2	694
		094
	d. Regulation of Chemicals in Food: The Federal Food, Drug, and	(05
	Cosmetic Act	695
	League of United Latin American Citizens v. Regan	695
	Notes and Questions	700
	2. Proprietary Rights to Information versus the Public's Right to Know	703
	a. Market Failure and the Availability of Information on Toxic Substances	703
	Wagner, Commons Ignorance: The Failure of Environmental Law to	
	Produce Needed Information on Health and the Environment	703
	Notes	705
	b. Trade Secrets and Information Property	706
	c. Public Disclosure Requirements and Right-to-Know Acts	707
	Karkkainen, Information as Environmental Regulation: TRI and	
	Performance Benchmarking, Precursor to a New Paradigm?	707
	Notes and Questions	709
F.	Preventing Harm from Hazardous Waste	711
	1. Regulation of Hazardous Air Pollutants Under the Clean Air Act	711
	2. Regulation of Toxic Water Pollutants Under the Clean Water Act	711
	3. Regulation of Hazardous Waste Management Under the Resource	
	Conservation and Recovery Act	711
	a. Introduction to the Management of Hazardous Waste	711
	Note on Pollution Prevention	712
	b. A Summary of RCRA	713
	c. Distinguishing Waste from Useful Materials: Legitimate versus Sham	
	Recycling	713
	Owen Electric Steel Co. of South Carolina, Inc. v. Browner	714
	Questions	717
	American Petroleum Institute v. EPA (API II)	717
	Notes and Questions	719
	Problem 8-3	720
	Hazardous Waste Management System	721
	Notes and Questions	722
	Note on Further Solid Waste Definitional Issues	724
	Problem 8-4	726
	d. Identification and Listing of Hazardous Wastes	726
	Note on Municipal Waste Combustion Ash	728
	Questions	729
	e. Regulation of Hazardous Waste Generation and Transportation	729
	f. Regulation of Hazardous Waste Generation and Hansportation f. Regulation of Hazardous Waste Treatment, Storage, and Disposal	730
	(1) TSD Facility Permits and Performance Standards	730
	(2) Land Disposal Restrictions and Treatment Requirements	731
	Columbia Falls Aluminum Co. v. EPA	733
	Notes and Questions	735
	Note on Siting TSD Facilities and Environmental Justice	735
	TNOTE OIL SITURE I STATE LACINGES AND ENVIRONMENTAL JUSTICE	/ .50

g. Regulation of Nonhazardous Solid Waste

CH	IAPTER IX
EN	NVIRONMENTAL CONTAMINATION LIABILITY
Aľ	ND REMEDIATION
Δ	The History and Purposes of CERCLA
1.	Superfund Amendments and Reauthorization Act of 1986
B.	An Overview of CERCLA
	Liability for Remediation of Hazardous Substances
	1. Proving a Prima Facie Case for CERCLA Liability
	a. Overview
	New York v. Shore Realty Corp.
	Notes and Questions
	b. Release, Hazardous Substance, and Facility
	Fertilizer Institute v. EPA
	Notes and Questions
	Problem 9-1
	c. Recoverable Response Costs
	2. Standard of Liability
	a. Strict, Retroactive, and Joint and Several Liability
	Burlington Northern and Santa Fe Railway Co. v. United States
	Notes and Questions
	Problem 9-2
	b. Affirmative Defenses to Liability
	Problem 9-3
	3. Potentially Responsible Parties
	a. Owners and Operators
	California Department of Toxic Substances Control v. Hearthside
	Residential Corp.
	Notes and Questions Problem 9-4
	b. Arrangers South Florida Water Management District v. Montalvo
	Notes and Questions
	Burlington Northern and Santa Fe Railway Co. v. United States
	Notes and Questions
	Problem 9-5
	c. Transporters
	d. Lenders and Trustees
	Problem 9-6
	e. Corporate Liability
	United States v. Bestfoods
	Notes and Questions
	Problem 9-7

4. Contribution and Private Cost Recovery Actions

Questions

Notes and Questions

Cooper Industries, Inc. v. Aviall Services, Inc.

United States v. Atlantic Research Corporation

Note on Contribution and Private Cost Recovery

xxii

846

847

850

852

852

856

859

860

860

863

D.	Liability for Imminent and Substantial Endangerments	793
	1. CERCLA Abatement Actions	794
	2. RCRA Imminent Hazards	795
	Maine People's Alliance v. Mallinckrodt, Inc.	795
	Notes and Questions	798
	Meghrig v. KFC Western, Inc.	800
	Notes and Questions	801
	3. Oil Spills	802
E.	Liability for Damage to Natural Resources	805
F.	The CERCLA Cleanup Process	807
	1. An Overview of the Cleanup Process	807
	2. The National Priorities List	809
	Carus Chemical Co. v. EPA	809
	Notes and Questions	811
	3. The National Contingency Plan and Cleanup Standards	812
	Ohio v. EPA	813
	Notes and Questions	816
G.	The Effect of the Discovery of Hazardous Substances on Real Estate Transactions	817
Cŀ	IAPTER X	
EI	NFORCEMENT OF ENVIRONMENTAL LAW	821
A.	Introduction	821
	The Actors	821
	1. Federal Officials	821
	2. State Officials	822
	3. Environmental Nongovernmental Organizations and Regulated Parties	823
	Harmon Industries, Inc. v. Browner	824
	Notes and Questions	828
C.	The Legal Authorities	829
	1. The Government's Information-Gathering Authority	829
	Notes and Questions	831
	2. The Government's Civil Litigation Authorities	833
	Sackett v. EPA	834
	Notes and Questions	838
	United States v. Smithfield Foods	840

Notes and Questions

United States v. Ahmad

4. Private Enforcement of Statutory Violations: Citizen Suits

5. Common Law versus Statutory Causes of Action

Boomer v. Atlantic Cement Co.

Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.

Notes and Questions

Notes and Questions

Notes and Questions

Problem 10-1

3. Criminal Liability

D. The Dynamic Nature of the Environmental Enforcement Process	865
1. Compliance Assistance	866
2. Compliance Incentives	866
Environmental Protection Agency, Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention	
of Violations	866
Notes and Questions	870
CHAPTER XI CLIMATE CHANGE LAW AND POLICY CHOICES	072
CLIMATE CHANGE LAW AND FOLICI CHOICES	873
A. The Science of Global Climate Change	874
Environmental Protection Agency, Endangerment and Cause or	
Contribute Findings for Greenhouse Gases Under Section 202(a)	a - (
of the Clean Air Act; Final Rule	874
Notes and Questions	878
B. Political and Economic Challenges	891
C. The Regulatory Menu	894
1. Climate Change Mitigation Targets, Opportunities, and Constraints	895
Questions	897
2. Statutory Design Issues	898
 Congressional Climate Bills, 2009-2010: Description and Questions for Analysis 	903
Questions About the 2009 and 2010 Climate Bills	905
4. The Climate-Focused Provisions of the Inflation Reduction Act of 2022:	
Description and Questions for Analysis	905
D. Federalism Issues in Current and Future Climate Legislation	910
Engel & Miller, State Governance: Leadership on Climate Change	911
Notes and Questions	912
Problem 11-1	914
Note on Federalism and the Inflation Reduction Act of 2022	915
E. Responding to Climate Change Without Comprehensive Federal Climate	916
Legislation Capping Emissions 1. Regulation Under the Clean Air Act	916
a. EPA's Authority to Regulate Greenhouse Gas Emissions	916
<i>Massachusetts v. EPA</i>	917
Notes and Questions	927
b. The Endangerment Finding	927
Environmental Protection Agency, Endangerment and Cause or)21
Contribute Findings for Greenhouse Gases Under Section 202(a)	
of the Clean Air Act; Final Rule	928
Notes and Questions	929
c. EPA Regulation of Greenhouse Gases from Motor Vehicles	930
d. Control of Stationary Sources of GHGs	933
Utility Air Regulatory Group v. EPA	934
Notes and Questions	941
Note on Regulating Greenhouse Gas Emissions from New and	
Existing Stationary Source Categories Under Section 111	942
West Virginia v. EPA	947
Notes and Questions	964

Additional Notes and Questions Regarding Stationary Source	
Regulation and Policy Vacillation	965
2. Additional Regulation	968
Note on Federalism Obstacles	968
3. Adaptation Risks and Responsive Strategies	969
4. Climate Change and Other Aspects of Environmental Law	971
a. NEPA and Climate Change	971
Food & Water Watch v. Federal Energy Regulatory Commission	971
b. The Endangered Species Act and Climate Change	973
Alaska Oil and Gas Ass'n v. Pritzker	973
Notes and Questions	973
5. Common Law Remedies	975
American Electric Power Co. v. Connecticut	975
Notes and Questions	981
F. International Issues	986
Adashek, Hop on the Carbon Neutral Bandwagon: Amending the	
Paris Agreement to Require Short-Term Goals and Long-Term	
Carbon Neutral Goals for Nationally Determined Contributions	986
Notes and Questions	987
Table of Acronyms	991
Table of Cases	
Index	

xxv