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BOOK REVIEW

HAS THE FIELD GROWN TOO COMPLEX FOR A STATE-SPECIFIC “HANDBOOK” ON ENVIRONMENTAL LAW?

A Book Review1 of The Government Institute’s

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1. Introduction: The Complexity of Environmental Law

Environmental law is a complex and dynamic area,3 involving over a

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3 The prefaces or introductions to leading environmental law texts state this premise in different ways, but tend to make similar points. See, e.g., Frank P. Grad & Joel A. Mintz, Environmental Law iii (4th ed., LEXIS 2000) (“[s]ubsequent editions increasingly faced an embarrassment of riches, reflected in the growth of the field into new areas, an ever greater flood of judicial decisions, and an ever expanding universe of secondary descriptive and analytical material”); Zygmunt J.B. Plater, Robert H. Abrams & William Goldfarb, Environmental Law and Policy: A Coursebook on Nature, Law, and Society i (West 1992) (“environmental law . . .seems more like a flood, challenging our ability to assimilate its force and volume. There is so much environmental law that few academics still try to focus on the entire field.”); Robert V. Percival et al., Environmental Regulation, Law, Science and Policy, xxix (3d ed., Aspen L. & Bus. 2000) (“[e]nvironmental law has generated an immense and fiercely complex web of regulations that affects the way we live, work, and do business.”); Thomas J. Schoenbaum & Ronald H. Rosenberg, Environmental Policy Law iii (3d ed., Found. Press 1996) (“[t]his ever-present characteristic of change makes the subject of environmental law enormously challenging for the instructor and the student alike.”); and John-Mark Stensvaag, Materials on Environmental Law v (West 1999) (“[t]he goal is not to provide a truly up-to-date reference work on the present state of environmental law or any corner of it. Such a challenge would be impossible to meet.”).

administered by dozens of federal and state agencies.\footnote{Federal departments and independent agencies with environmental regulatory or enforcement responsibilities include: Environmental Protection Agency; U.S. Army Corps of Engineers; National Park Service of the Department of the Interior; U.S. Fish and Wildlife Service of the Department of the Interior; Bureau of Land Management of the Department of the Interior; Office of Surface Mining Reclamation and Enforcement of the Department of the Interior; Minerals Management Service of the Department of the Interior.} Within

the area of environmental law, there are specialists and subspecialists. There are


In South Carolina, state agencies with environmental regulatory or enforcement responsibilities include: the Department of Health and Environmental Control (Bureau of Air Quality Control, Bureau of Environmental Services, Bureau of Water, Bureau of Land and Waste Management, Bureau of Ocean and Coastal Resource Management); the Department of Natural Resources; and the South Carolina State Budget and Control Board. See generally Rolf R. von Oppenheld, Eric R. Hiser & Mark E. Freeze, South Carolina Environmental Law Handbook (3d ed., Govt. Inst. 2000) (listing many of these agencies in Chapter One).

It would be almost impossible to come up with a definitive list of “subspecialties” in environmental law; however, based on how certain professional organizations are structured and how certain materials are organized, one can observe some method of organization. See e.g. American Bar Association, Standing Committee on Environmental Law <http://www.abanet.org/publicserv/environmental/mo/directory.html> (accessed Mar. 4, 2001) (listing the following subcommittees in environmental law: Air Quality; Climate Change and Sustainable Development; Endangered Species; Environmental Crimes and Enforcement; Environmental Transactions, Audits and Brownfields; International Environmental Law; Special Committee on Agricultural Management; Special Committee on Science and Technologies; Special Committee on Solid Waste; Superfund & Hazardous Waste; Toxic Torts and Environmental Litigation; and Water Quality and Wetlands); Findlaw. FindLaw: Library: Subject: Environmental. <http://stu.findlaw.com/journals/environmental.html> (accessed Mar. 4, 2001) (breaking "environmental” law down into five categories: Air, Energy, General, Waste, and Water). Likewise, law firms specializing in environmental law often identify attorney speciality areas by category. See e.g. Hunton & Williams <http://www.hunton.com/practice_areas/index.asp> (accessed Mar. 11, 2001) (stating that the international 700-plus firm’s environmental practice area encompasses the following subspecialties: Air; Brownfields Redevelopment; Environmental Audits and Compliance Assessments; Environmental Crimes; Environmental Enforcement and Defense; Environmental Issues in Business Transactions; Environmental Litigation and Toxic Torts; Superfund; Toxic Substances Control Act; Waste; Water; Wetlands; Endangered Species; and Natural Resources). See also Beveridge and Diamond, P.C. <http://www.bdlaw.com/quick_guide.asp> (accessed Mar. 11, 2001) (displaying fields on environmental law subspecialties that the firm practices. Specifically, the firm’s environmental practice includes the following areas: Biotechnology; Brownfields; Clean Air Act; Clean Water Act; Environmental Management; Envir. Audits/Compliance Assessments; EPCRA; Hazardous Waste/RCRA; Land Use and Natural Resources; National Environmental Policy Act; Natural Resource Damages; Noise Regulations; Pesticides; Safe
hundreds of books, over 40 specialty journals, many daily and weekly services.

Drinking Water Act; Site Remediation; Solid Waste and Resource Recovery; Spill Response and Reporting; Superfund/CERCLA; Toxic and Harmful Substances/TSCA; Voluntary Initiatives and Programs; and Wetlands).


and a variety of internet sources available dedicated specifically to this subject. For the uninitiated, it may be an area ripe for malpractice. Indeed, it can be


See J.B. Ruhl. Malpractice and Environmental Law: Should Environmental Law “Specialists” Be Worried?. 33 Hous. L. Rev. 173 (1996). The author acknowledges that, at the time he wrote his article, environmental law malpractice claims were insignificant in terms of the dollar amount of aggregate malpractice claims; however, he states the following:

Environmental law indisputably imposes potentially high liabilities and expensive regulatory burdens for attorneys’ clients, a condition that could lead to a spillover effect upon attorneys when clients stung by
cogently argued that, due to the very nature of the subject, any book on environmental law will be out of date before it is published.

Given this situation, *The South Carolina Environmental Law Handbook, Third Edition* (Handbook) makes a valiant effort to provide an overview of this complex area with respect to environmental law in South Carolina. Yet, a review of the handbook cannot help but become a commentary on whether and how specialists can provide meaningful access to "the" law that governs the environment. This review is written in four sections: (1) this introduction demonstrating the complexity of the environmental law arena; (2) an overview of the Handbook contents; (3) a brief glimpse into other sources of information on environmental law in South Carolina; and (4) the conclusion. In short, this review concludes that the history of increasing sources for South Carolina environmental law, the escalating complexity of environmental law generally, and the current Handbook together demonstrate it is time for a loose-leaf environmental law reference book in South Carolina.

2. **Handbook Overview**

The Handbook is 565 pages long and organized into sixteen chapters. Its authors are practicing attorneys of the TESTLaw group of the firm von environmental liability and regulatory entanglements take issue with their attorneys' performance. As a number of legal practitioners and malpractice insurers have proposed, this may suggest that malpractice claims statistics do not fully reveal the latent potential for environmental malpractice exposure. Indeed, environmental law suits constitute a good number of the currently pending civil cases in federal and state courts, suggesting that a growing number of environmental law and related cases are in the pipeline, which could lead to malpractice claims. *Id.* at 178-179.


Oppenheld, Hiser & Freeze, P.C.\textsuperscript{14} The preface indicates that the \textit{Handbook} is "intended to provide a general guide to the complex series of statutes and regulations that comprise South Carolina’s environmental laws."\textsuperscript{15} Although it has a detailed Table of Contents,\textsuperscript{16} the lack of an index might limit the book’s utility.\textsuperscript{17} Appropriately, the authors acknowledge some of the issues discussed in the previous section of this review by including a caution that "this material is not intended to be legal advice, but rather is intended only as an overview of complex areas of law which are undergoing constant change and evolution."\textsuperscript{18}

Chapter One, “Federal and State Government Agencies Responsible for Environmental and Natural Resources Law,” provides an eleven page description and list of certain agencies and contacts on a federal and state level in the environmental law area. While helpful, the federal list seems incomplete for South Carolina users (for example, the National Marine Fisheries Service (NMFS) of the Department of Commerce, which has important responsibilities under the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act, is not listed, despite the fact that NMFS has a field office in the

\textsuperscript{14} \textit{Handbook, supra} n. 11, at xxxviii. The \textit{Handbook} is not a pure marketing document such as one handbook published by a different law firm, which in addition to a 21 page “environmental law overview,” provides readers with sections entitled “Types of Matters Morgan Lewis Has Handled in Each Environmental Area,” “Office Coordinators for Specific Environmental Practice Areas,” and “Office Coordinators for Specific Locations.” Morgan, Lewis & Bockius. \textit{Environmental Deskbook 1998} iii (Morgan, Lewis & Bockius LLP 1998). That book is specifically geared toward clients of that large firm’s practice. \textit{Id.}

\textsuperscript{15} \textit{Handbook, supra} n. 11, at xxxviii.

\textsuperscript{16} \textit{Id.} at v-xxxvii.

\textsuperscript{17} Interestingly, the second edition of the \textit{Handbook} did contain an index. \textit{Supra} n. 13, at 446-453.

\textsuperscript{18} \textit{Handbook, supra} n. 11, at xxxviii. The authors further note that “[l]egal advice is based on the application of the most current law, including nuances of changing interpretations, to specific situations. Therefore, this handbook cannot serve as legal advice, and the authors strongly encourage readers to obtain independent legal advice and to consult the latest versions of applicable statutes and regulations when addressing their specific situations. The ‘Team for Environmental, Science and Technology LAW’ (TESTLaw) is a national environmental, science and technology law practice group, concentrating its legal efforts in the area of environmental law. The TESTLaw Practice Group currently consists of twelve attorneys and paraprofessionals, and operates within the law firm of von Oppenheld, Hiser and Freeze, P.C. The principal mission of the TESTLaw Practice Group is to solve its clients’ problems in the increasingly complex fields of environmental, land use, natural resources, intellectual property and safety and health law.” \textit{Id.}
It also might be helpful to list website addresses for the various federal departments included in the *Handbook*. One very helpful feature in this chapter is the inclusion of phone numbers and email addresses for Department of Health and Environmental Control employees.

Chapter Two, "Air Quality Regulation," provides a ninety-six page overview of federal and state law regulating the air. As is true for much of the *Handbook*, the majority of the chapter focuses on federal law. The authors note in their preface that federal law must be included to "explain and provide context to the South Carolina statutory and regulatory structure." Chapter Three, "Water Quality Regulation," provides a ninety-eight page overview of federal and state law regulating water of all types (surface water, wetlands, ground water, drinking water, and coastal water). Chapter Three also dedicates two pages to discussing regulatory takings.

The next five chapters deal with waste and hazardous materials. Chapter Four, "Non-Hazardous Waste Regulation" (twenty-two pages):

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23 Id. at xxxviii.

24 Id. at 108-205.

25 Id. at 206-207.

26 Id. at 208-229.
“Hazardous Waste,” (one hundred six pages);\textsuperscript{27} Chapter Six, “Underground and Aboveground Storage Tanks” (twenty pages);\textsuperscript{28} Chapter Seven, “Nuclear Materials,” (eight pages);\textsuperscript{29} and Chapter Eight, “Superfund,” (seventy-five pages)\textsuperscript{30} provide logical organization to these important issue areas.

Chapter Nine, “Emergency Planning and Community Right-to-Know Regulation,”\textsuperscript{31} contains a sixteen page overview of the law that created federal requirements for public access to certain information\textsuperscript{32} and explains how it is applied in South Carolina. Chapter Ten, “Wildlife Protection in South Carolina,”\textsuperscript{33} has nineteen pages about the laws that protect wildlife, focusing on the federal Endangered Species Act.\textsuperscript{34} Other protective measures, such as the Migratory Bird Treaty Act, the Clean Water Act, and other federal laws are discussed in six pages at the end of this chapter. The Essential Fish Habitat (EFH) consultation requirements\textsuperscript{35} added in 1996 as an amendment to the Magnuson-Stevens Fishery Conservation and Management Act\textsuperscript{36} are not included in the \textit{Handbook}. Because the Southeast Region of the National Marine Fisheries Service is involved in thousands of EFH consultations annually,\textsuperscript{37} the requirements would be a great addition to the end of this chapter in future editions.

The remaining chapters provide brief glimpses into important areas of environmental and related practice. These chapters are: Chapter Eleven, “Land Use Planning” (five pages);\textsuperscript{38} Chapter Twelve, “Environmental Aspects of Commercial Transactions” (seven pages);\textsuperscript{39} Chapter Thirteen, “Enforcement” (forty-one pages);\textsuperscript{40} Chapter Fourteen, “Common Law Claims in Environmental Lawsuits” (nineteen pages);\textsuperscript{41} Chapter Fifteen, “Insurance Coverage for

\textsuperscript{27} Id. at 230-335.
\textsuperscript{28} Id. at 336-355.
\textsuperscript{29} Id. at 356-363.
\textsuperscript{30} Id. at 364-438.
\textsuperscript{31} Id. at 439-454.
\textsuperscript{33} \textit{Handbook, supra} n. 11, at 455-473.
\textsuperscript{34} 16 U.S.C. §§ 1531-1544 (2000).
\textsuperscript{36} 16 U.S.C. §§ 1801 to 1883 (2000).
\textsuperscript{37} Interview with Andreas Mager, Jr., Habitat Conservation Division, National Marine Fisheries Service Southeast Regional Office (Sept. 27, 2000).
\textsuperscript{38} \textit{Handbook, supra} n. 11, 474-478.
\textsuperscript{39} Id. at 479-485.
\textsuperscript{40} Id. at 486-526.
\textsuperscript{41} Id. at 527-545.
Environmental Claims in South Carolina” (eleven pages),

Although the preface states that the Handbook is updated with regulations through August 15, 2000, the update is not always complete. Small errors (which may, of course, be significant) are to be expected in a book covering such a broad topic area. But because the Handbook is published as a single bound volume, it will be at least two years before minor (or major) changes can be incorporated into the book. Furthermore, new developments will also have to wait for a new edition.

3. The Handbook in Context: Delivering Information About South Carolina Environmental Law from the 1970's to Today

As environmental law has developed as a specialized field, an increasing variety of sources have become available to those interested in the subject, even on a state level in South Carolina. For example, in addition to the Handbook, persons looking for a current summary of environmental law particular to South Carolina have a resource through the South Carolina Bar’s Environmental Law in South Carolina. Like the Handbook, Environmental Law in South Carolina acknowledges the inherent difficulty in writing any book on environmental law by stating, “[a]pproaching a subject like environmental law, even at the state level, is an intimidating task. The field has enormous scope, can be awesomely technical, and is subject to almost constant change.” Unlike the Handbook, Environmental Law in South Carolina acknowledges the inherent difficulty in writing any book on environmental law by stating, “[a]pproaching a subject like environmental law, even at the state level, is an intimidating task. The field has enormous scope, can be awesomely technical, and is subject to almost constant change.”

42 Id. at 546-556.
43 Id. at 557-565.
44 Handbook, supra n. 11. at xxxviii.
46 See discussion supra section 1. Introduction.
48 Id. at preface.
Law in South Carolina focuses almost exclusively on state law. Together, therefore, these two books provide a basic overview or research starting point for people seeking to understand environmental law in South Carolina. However, because Environmental Law in South Carolina is now three years old, it suffers from the same time-frame limitations as the Handbook.

Other state-specific sources, such as the “South Carolina” chapter in Volume 8 of Environmental Law Practice Guide, a larger multi-volume treatise, may provide some helpful information to someone researching South Carolina environmental law. One benefit of this source is that it is a “loose-leaf” service and is updated several times per year. Two down-sides to relying on this source for broad information delivery regarding South Carolina environmental law are (1) the cost of the entire treatise may not be affordable and (2) state-level updates to this service are not as frequent as might be needed by day-to-day practitioners.

A look at the history of compiled South Carolina environmental information not only places current sources for environmental law research in context, it also demonstrates the increasing interest in South Carolina-specific environmental law information. As environmental law was emerging nationwide as a specialized field, early access to compiled written information about South Carolina environmental law came from state employees and departments, starting in the 1970’s. One of the first official sources regarding South Carolina environmental

49 The authors note that “the principal focus of this book is on South Carolina law and regulation. Readers interested in the federal programs can consult any one of several outstanding treatises on the subject.” Id.

50 Environmental Law in South Carolina has two features. an index and a list of internet sources. that are not part of the Handbook. Id. at index. 422.

51 Michael B. Gerrard. Environmental Law Practice Guide: State and Federal Law. (Matthew Bender 2000). The South Carolina Chapter, Chapter eighty three, was authored by Professor Stephen A. Spitz of the University of South Carolina School of Law.

52 In 2000, this volume of Environmental Law Practice Guide was updated in March, July, and November. Id. at FL-1.


54 For example, the current version of the Matthew Bender Environmental Law Practice Guide still states the South Carolina Coastal Council has the responsibility for issuing certain permits. Environmental Law Practice Guide, supra n. 52. at 83-5. However, as noted in the Handbook, since 1993 the Office of Ocean and Coastal Resource Management (OCRM) of the Department of Health and Environmental Control has been responsible for these permitting duties. Handbook, supra n. 11, at 10.

law, Legal Perspectives of Environmental Health in South Carolina, was published by General Counsel to the State Board of Health in 1973. At that time, environmental decisions were so scarce that a ninety-five page book was capable of including a “compilation of the water pollution control and solid waste disposal aspects of environmental health.” This compilation totaled only sixty-seven pages. Building on this compilation, the newly-formed S.C. Department of Health and Environmental Control published Environmental Quality Law: A South Carolina Casebook in 1975. This 406 page casebook covered “wastewater treatment plant operators, radiological health, recreational waters, public water supply and waste disposal systems, food service and restaurant regulations, air pollution control, and an expanded treatment of the areas of solid waste management and water pollution control.”

Shortly thereafter, students at the University of South Carolina School of Law Environmental Law Society pulled together a compilation of materials on South Carolina environmental law. This volume covered the following six topics: (1) Environmental Litigation in South Carolina: The Law of Nuisance; (2) The National Environmental Policy Act; (3) Basic Provisions of the Federal Water Pollution Control Act Amendments of 1972 and the Clean Air Act Amendments of 1970; (4) The Law of Tidelands in South Carolina; (5) The Wild and Scenic Rivers of 1969; and (6) Legal Aspects of Forest Lands Management. After this project, the University of South Carolina School of Law Environmental Law Society published a series of newsletters under various names. These publications eventually led to the inception of the South Carolina Environmental Law Journal.

Other documents dealing with environmental law were published in the 1990’s, including North Carolina law firm Moore and Van Allen’s Carolina

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56 Walton J. McLeod, III, Legal Perspectives of Environmental Health in South Carolina (S.C. State Board of Health 1973).
57 Id. at vi.
58 Id. at 19-85.
60 Id. at 19-85.
62 Id. at Table of Contents.
Environmental Law, 65 Important Developments in Environmental Law, a bound volume of written materials that accompanied a 1992 CLE presentation, 66 and the McNair firm’s South Carolina Environmental Compliance Survival Guide. 67 The South Carolina Department of Environmental Control also publishes a small guide book on environmental permitting, A General Guide to Environmental Permitting in South Carolina. 68 In 1992, first the monthly South Carolina Environmental Compliance Update was published, 69 and it has remained an important regular newsletter providing information on federal, state, and local developments in environmental law. 70

Assuming the increasing number of sources for environmental law reflect increasing interest and relevance to lawyers and citizens of South Carolina (and others dealing with South Carolina environmental law), the Handbook provides an important current resource. Yet, again assuming on-going and increasing interest in environmental law, in light of the subject area’s mounting complexity, it seems like the right time to take the next step in terms of providing complete and up-to-date coverage of South Carolina’s environmental and natural resources law. To this end, a loose-leaf version of the Handbook or Environmental Law in South Carolina, with regular (e.g. quarterly or biannually) updates, could benefit all those who need timely and comprehensive knowledge of South Carolina environmental law. 71

67 James W. Potter, Elizabeth F. Mallin & Daniel J. Brown, South Carolina Environmental Compliance Survival Guide 1 (McNair & Sanford 1995) (“Compliance with environmental laws grows ever more complex as Congress, EPA and state governments and agencies continually expand and revamp environmental laws and regulations.”).
69 McNair Law Firm, 1 South Carolina Environmental Compliance Update 1 (Nov. 1992).
70 The latest update to the South Carolina Environmental Compliance Update was published this year in March. McNair Law Firm, 9 South Carolina Environmental Compliance Update 5 (Mar. 2001).
71 Another attractive option might be a web-based source for South Carolina environmental law.
4. Conclusion

The answer to the question posed in the title of this book review ("Has the Field Grown Too Complex for a State-Specific "Handbook" on Environmental Law?") is "no, but . . . ." A state-specific handbook is still an important and useful tool. Yet as Professor Ferrey notes in his book, *Environmental Law: Examples and Explanations*, environmental law is new and rapidly evolving. . . . There is no Restatement of Environmental Law. We are still just beginning the 'statement.'

Within this context, the *South Carolina Environmental Law Handbook* offers readers a good place to get a basic "statement" of many federal and state environmental law issues in South Carolina. Given, however, given the sustained interest state-wide in environmental law and the complexity and rapid developments in the area, now is the time to create a loose-leaf version of an environmental law handbook for South Carolina.

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73 *Id.* at xix.