

I. Beginning Research.....	1
A. Current Awareness Services.....	1
B. Secondary Sources.....	2
1. Books.....	2
2. Dictionaries.....	3
3. Finding Books in the Online Catalog.....	3
4. Finding Articles.....	4
C. LexisNexis and Westlaw.....	4
1. LexisNexis.....	4
2. Westlaw.....	5
II. Federal Materials.....	5
A. Major Federal Statutes.....	5
B. Rules and Regulations.....	6
C. Environmental Protection Agency.....	7
D. Other Federal Agencies.....	8
III. North Carolina and Other State Materials.....	8
A. North Carolina Environmental Laws.....	9
B. North Carolina Environmental Regulations.....	9
C. Secondary Sources.....	10

**Environmental law** is a complex mix of federal, state and local laws, regulations, policy choices, science, and health concerns. In addition, it is a dynamic area of the law with changes occurring rapidly. Researching environmental law requires awareness that this area of the law is more than just a collection of laws and regulations and is, in fact, a constantly changing legal system.

This guide provides an overview of both federal and North Carolina-specific environmental law sources. For additional sources, including different state materials, researchers may wish to consult other relevant research guides and portals such as Vermont Law School’s **Environmental Law Research Resources** (<http://forms.vermontlaw.edu/library/resource-directory/index.cfm>), and/or the **Environmental & Natural Resources Law** guide (<http://lawlib.lclark.edu/research/envlaw.php>) prepared by Lewis & Clark Law School’s Paul L. Boley Law Library.

## I. Beginning Research

### A. Current Awareness Services

It is possible to begin environmental law research in primary legal sources, such as an annotated code and the *Code of Federal Regulations*. However, because of the complexity of the

subject, the importance of varied regulatory material, and the frequent changes in law and regulations, specialized research tools have been created. There are two major electronic and looseleaf services which can greatly aid in researching this complex area of the law: the *Environmental Law Reporter* and the *Environment Reporter*.

***Environmental Law Reporter (ELR)*** published by the Environmental Law Institute (KF 3775 .A59 E58 & <http://db.library.duke.edu/search?id=DUKE004941608>) covers recent developments in the courts, Congress, and agencies and contains primary law sources and articles and analysis of environmental law issues. ELR includes the full text of important federal environmental statutes and major treaties and agreements, as well as state and international materials. No password is needed when accessing this resource on the Duke campus. For off campus access, Duke Law students and faculty can request the password at the Reference Desk. Since 2003, the print version contains only the News & Analysis section, which reports on major environmental law developments.

***Environment Reporter***, published by the Bureau of National Affairs (BNA) (<http://db.library.duke.edu/search?id=DUKE003796988>; also available on LexisNexis/Westlaw), includes primary and secondary material covering federal environmental laws, regulations, all significant federal and state court cases relevant to environmental law, policies, executive orders, current developments and, prior to July 1994, state environmental laws. The Federal Laws sections contain the full text of important federal environmental statutes. The incorporation of amendments brings the statutes up to date.

BNA also publishes a looseleaf service for international environmental law, which is available electronically to the Duke Law community: the ***International Environment Reporter*** (<http://db.library.duke.edu/search?id=DUKE003796988>; also available on Lexis/Westlaw). This series provides biweekly information about major international environmental developments.

## **B. Secondary Sources**

The Law Library has a number of materials to aid your understanding of environmental law.

### **1. Books**

Chanin, Leah, F., ed., ***Specialized Legal Research*** (Ref Desk KF240 .S64 1987). This annually-updated volume contains a chapter called “Environmental Law and Land Use Planning”.

Findley, Roger W. & Farber Daniel A., ***Environmental Law in a Nutshell***, 8th ed. (Reserve KF3775.Z9 F56 2010). Addresses major topics in environmental law such as judicial review, federalism, toxic substances, pollution control, risk management and preservation.

Grad, Frank P., ***Treatise on Environmental Law***. (KF3775 .G72 through 1998; full-text and up-to-date on Lexis). Comprehensive treatise on environmental law issues by Professor Grad including analysis of climate change initiatives domestically and internationally. Professor

Grad's work has been cited in numerous environmental law cases.

Guruswamy, Lakshman D. *International Environmental Law in a Nutshell*, 4th ed. (Reserve K3585 .G87 2012). This book addresses international issues such as global climate change, trans-boundary pollution, and the impact of world population on environmental law.

Novick, Sheldon M., Stever, Donald W. & Mellon, Margaret G., *Law of Environmental Protection* (KF3775 .N68 1987) (Updated annually). A treatise on the legal aspects of the release of pollutants, wastes and toxic substances into the environment. Includes a section by section analysis of the nine principle federal environmental statutes administered by the Environmental Protection Agency.

Riesel, Daniel. *Environmental Enforcement Civil and Criminal*. 1997- . (KF3775 .R53). A treatise dealing with the complex system of civil and criminal enforcement of federal and state environmental laws.

Rodgers, William H., *Environmental Law*, 2d ed., (Reserve KF3812 .R63 1994). This single-volume hornbook, written specifically for law students, provides detailed treatment of issues, legal principles, and current law.

Salzman, James & Thompson, Barton H. Jr. *Environmental Law and Policy* (Concepts & Insights series), 3d ed. (KF3775 .S25 2010). An overview of the major themes and issues in environmental law, including air and water pollution, endangered species protection, and the National Environmental Policy Act (NEPA).

Selmi, Daniel P. & Manaster, Kenneth A., *State Environmental Law* (KF3775.Z95 S45 1989; also available on Westlaw: STENVNL) (Updated annually). This treatise focuses on four areas: air quality, water quality, current hazardous waste management, and cleanup of hazardous waste from past activities.

## 2. Dictionaries

King, James, J., *The Environmental Regulatory Dictionary*, 4th ed. (Ref KF3775.A68 K56 2005). Designed to be a supplement to researching environmental regulations in the Code of Federal Regulations (CFR), Title 40, Protection of Environment. It is a compilation of terms from both Title 40 of the CFR (as of July, 1987) and material in the Federal Register pertaining to Title 40 (as of June, 1994).

Robinson, Nicholas A., *Environmental Law Lexicon* (Ref KF3775 .A68 R67 1992) (updated through 2010). Compilation of the principal definitions used in environmental statutes, regulations and management systems in the United States.

## 3. Finding Books in the Online Catalog

Many more books and treatises written about environmental law topics can be located using the **Duke Libraries Online Catalog** (<http://search.library.duke.edu/>). A particularly

useful approach to searching for these secondary sources is to perform subject searches. For example, a search using the subject heading *environmental law* will return a result with many subheadings. If you are researching a particular subject or narrower subtopic, you can narrow your search by using the subtopics that appear in the left sidebar. Below are some suggestions for common environmental law subject headings. Note: your search terms do not need to be capitalized nor do you need to add dashes between terms.

- *Environmental law -- United States.*
- *Environmental law -- North Carolina.*
- *Air -- Pollution -- Law and legislation.*
- *Water -- Pollution -- Law and legislation -- North Carolina.*
- *Liability for environmental damages.*

You can also try a **title keyword** search using various environmental law terms such as the following examples: *Clean Air Act*, *Clean Water Act*, *Superfund*, *CERCLA*, *RCRA*, *Resource Conservation Recovery Act*, *National Environmental Policy Act*, or *Toxic Substances Control Act*.

#### 4. Finding Articles

**LegalTrac** (<http://db.library.duke.edu/search?id=DUKE002990148>) contains citation information for articles from all major law reviews, law journals, specialty law and bar association journals, and legal newspapers. The articles range in date from 1980 to the present. One useful approach is to use the “Subject Guide Search” setting for *environmental law*. This will retrieve a very large number of articles, but it will also display many narrower subdivisions and related subjects from which to choose relevant material. For example, one of the related subjects, *Liability for Environmental Damages*, is divided into many narrower subdivisions which you can scan for relevant material.

Other databases which will provide citations to articles and the full text of articles on environmental law topics include the law review databases on Lexis and Westlaw and **Index to Legal Periodicals** (<http://db.library.duke.edu/search?id=DUKE003350460>).

### C. LexisNexis and Westlaw

#### 1. LexisNexis (<http://lawschool.lexis.com>)

A listing and description of the environmental law files on LexisNexis can be located under **Area of Law - By Topic > Environment**. The Lexis environmental law files contain primary law material, legislative histories of major acts, regulatory material and secondary sources. Lexis also has many environmental news files that can be found under **Area of Law - By Topic > Environment > Search News > General News & Information**. In addition, Lexis provides a searchable database of federal and state environmental site records. Information on these sites can be found at **Area of Law - By Topic > Environment > Environmental Site Records**.

## 2. Westlaw (<http://lawschool.westlaw.com>)

Westlaw contains more than 150 environmental law databases covering all aspects of environmental law. A list of these databases can be found in the online **Westlaw Directory** under **Topical Materials by Area of Practice > Environmental Law**. The Westlaw environmental law databases contain primary law material, legislative history, regulatory material and secondary sources. In addition, Westlaw contains many news databases relating to environmental issues which can be found in the News & Information section of the Westlaw Environmental Law Database Directory.

Various environmental records are also available on Westlaw in the Database Directory under **Public Records > Business & Corporate Information > Environmental Records**. An example is the database Environmental Data Resources - Civil Enforcement Docket (EDR-DOCKET) which identifies defendants in cases filed by the Department of Justice on behalf of the EPA.

## II. Federal Materials

### A. Major Federal Statutes

There are many laws that make up the federal environmental law field. A few of the most important laws are summarized below. These and other important federal environmental laws can be accessed from the **Environmental Protection Agency's** (EPA) website: <http://www.epa.gov/lawsregs/laws/index.html>.

- **National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §§ 4321-4370)**. “NEPA is the basic national charter for protection of the environment. It establishes policy, sets goals, and provides means for carrying out the policy.” The most important provision in NEPA is § 102(c) (at 83 Stat. 853) which requires federal agencies to document their consideration of environmental factors by writing environmental impact statements (EIS) during their decision-making processes.
- **Clean Air Act (CAA) (42 U.S.C. §§ 7401 et seq.) (1970)**. The CAA regulates air emissions from area, stationary, and mobile sources. It authorizes the EPA to establish National Ambient Air Quality Standards (NAAQS) to protect public health and the environment. Under the CAA, each state must submit a State Implementation Plan (SIP) to the EPA, for the implementation of NAAQS. The result of eleven separate Acts of Congress, the CAA is the longest and most complex statutory and regulatory scheme for any of the environmental laws in the United States.
- **Clean Water Act (33 U.S.C. §§ 1251 et seq.) (1977)**. This 1977 amendment to the Federal Water Pollution Control Act of 1972, sets the basic structure for regulating discharges of pollutants into waters of the United States.
- **Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. §§ 9601 et. seq.) (1980)**. CERCLA, also called “Superfund”, was originally enacted in 1980 to address the threats to human health and the environment from abandoned hazardous waste disposal sites. CERCLA is commonly known as “Superfund” because it established the Hazardous Substance Superfund for response action and provides for federal and state sharing of response costs. CERCLA was

substantially modified by the Superfund Amendments and Reauthorization Act of 1986 (SARA).

- **Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. §§ 9601 et seq.) (1986).** SARA significantly amended CERCLA. SARA emphasized the importance of finding permanent remedies for cleaning up hazardous waste sites, increased State involvement in Superfund activities, focused on human health problems associated with hazardous waste, and encouraged citizen participation in hazardous waste cleanup decisions. SARA also directed the EPA to revise the **Hazard Ranking System (HRS)** ([http://www.epa.gov/superfund/programs/npl\\_hrs/hrsint.htm](http://www.epa.gov/superfund/programs/npl_hrs/hrsint.htm)) to ensure that the relative degree of risk to human health and the environment posed by uncontrolled hazardous waste sites was taken into account when deciding which sites were placed on the National Priorities List (NPL) (<http://www.epa.gov/superfund/sites/npl/index.htm>).
- **Endangered Species Act (ESA) (7 U.S.C. § 136 & 16 U.S.C. §§ 1531 et seq.) (1973).** The ESA was enacted to conserve threatened and endangered plants and animals as well as their habitats. In order to receive protection, a plant or animal species must be placed on the federal list of endangered and threatened wildlife and plants (<http://www.fws.gov/endangered/>), maintained by the U.S. Fish and Wildlife Service.
- **Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §§ 6901-6992k) (1976).** RCRA governs hazardous substances and toxic waste. It requires the EPA to promulgate standards that apply to generators and transporters of hazardous waste and owners and operators of facilities which treat, store and dispose of such waste. RCRA was significantly amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA).
- **Toxic Substances Control Act (TSCA) (15 U.S.C. §§ 2601 et seq.) (1976).** TSCA gives the EPA the ability to track the 75,000 industrial chemicals currently produced or imported into the United States. Existing chemicals are listed on the **TSCA Chemical Substance Inventory** (<http://www.epa.gov/oppt/newchems/pubs/inventory.htm>).

## B. Rules and Regulations

In general, environmental statutes grant power to administrative agencies, such as the EPA, to propose and promulgate regulations. These regulations have the force and effect of law. Environmental law is often characterized by legal disputes between private parties and government agencies rather than between private parties. As a result, regulations promulgated by the EPA and state agencies are fundamentally important sources of environmental law. Regulations explain how various environmental statutes are interpreted and enforced.

The vast majority of federal regulations governing environmental law issues are found in Title 40 (Protection of Environment) of the *Code of Federal Regulations (C.F.R.)*. Relevant regulations are also found in Titles 5, 10, 15, 18, 26, 33 and 50. The current print version of the CFR is located in the Federal Alcove; previous editions are located on Level 1 in Law Documents (AE 2.106/3). The CFR may be found online in PDF via GPO's **Federal Digital System (FDsys)** (<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>), 1996-current edition; and **HeinOnline** (<http://db.library.duke.edu/search?id=DUKE003131760>), 1938-previous edition.

The *Federal Register* is the official daily publication for Rules, Proposed Rules, and Notices

of all federal agencies and organizations. Beyond the traditional daily print editions of the Federal Register, electronic versions are available that make searching for specific areas, such as environmental regulations, easier. Regulations.gov includes a “Browse by Subject” feature. By selecting the broad topic of “Environmental Protection” thousands of results are returned, but there are basic and advanced search options to narrow your search.

Many of the regulations promulgated by the EPA and other federal agencies first begin as proposed regulations, and interested members of the public can comment on the proposed regulations in a process known as “informal” rulemaking or “notice and comment” rulemaking. The EPA’s **Docket Centers** provide information about the rulemaking process. A docket is established each time a rulemaking process is announced. A docket is assigned a tracking number and contains Federal Register documents, supporting documents and public comments. Information about dockets is available at <http://www.epa.gov/dockets/index.htm>.

### **C. Environmental Protection Agency**

The **Environmental Protection Agency (EPA)** (<http://www.epa.gov/>) was created in 1970 as an independent agency by Presidential Executive Order 11472 (<http://www.archives.gov/federal-register/codification/executive-order/11472.html>). The EPA is the primary enforcer of all federal environmental laws. The major laws that form the legal basis for the EPA’s regulatory power can be found at the EPA’s site (<http://www.epa.gov/lawsregs/laws/index.html>).

The EPA provides online access to many of its technical and public information documents (<http://www.epa.gov/epahome/publications.htm>). The **National Service Center for Environmental Publications (NSCEP/NEPIS)** (<http://www.epa.gov/ncepihom/>), which is a central repository for all EPA documents, contains more than 28,000 titles in both print and electronic format. The **Envirofacts Data Warehouse** (<http://www.epa.gov/enviro/index.html>) provides the public with direct access to EPA data.

The **Environmental Appeals Board** (<http://www.epa.gov/eab/>) is the final agency decision-maker on administrative appeals under all major environmental statutes that EPA administers. Many of the Environmental Appeals Board’s formal written opinions are available online through this site.

The EPA’s **Office of Administrative Law Judges (OALJ)** (<http://www.epa.gov/oalj/>) is an independent office in the Office of the Administrator of the EPA. Administrative Law Judges (ALJ) conduct hearings and render decisions in proceedings between the EPA and persons, businesses, and government entities that are regulated under environmental laws. All decisions issued by an ALJ are subject to review by the Environmental Appeals Board (EAB). Decisions and orders of the ALJ (1989-present) are available at: (<http://www.epa.gov/oalj/orders.htm>).

The **Atmospheric Sciences Modeling Division Library** (<http://www.epa.gov/libraries/amd.html>) is located in Research Triangle Park, North Carolina. The Library is open to U.S. EPA staff; on-site contractors; and the public during limited hours.

To learn about other divisions of the EPA, consult the *U.S. Government Manual*

(<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=GOVMAN>) or the EPA website.

#### **D. Other Federal Agencies**

While the EPA is the federal agency most directly involved with environmental law issues, no single agency is in charge of administering and enforcing all federal environmental programs. The federal agencies listed below also have some environmental law responsibilities.

The **Environment and Natural Resources Division** (<http://www.usdoj.gov/enrd/>), which is part of the Department of Justice, handles environmental and natural resources litigation on behalf of the United States. It is divided into nine litigating sections focusing on specific types of litigation. For example, the **Environmental Enforcement Section** brings civil enforcement cases on behalf of its client agencies, primarily the EPA. The **Environmental Crimes Section** is responsible for prosecuting individuals and industries which have violated federal environmental statutes.

The **Council on Environmental Quality (CEQ)** (<http://www.whitehouse.gov/ceq/>) was established by Congress within the Executive Office of the President as part of the National Environmental Policy Act of 1969 (NEPA). NEPA assigns CEQ the task of ensuring that federal agencies meet their obligations under the Act and plays a central role in the Environmental Impact Statement (EIS) process. The CEQ also assists and advises the President. While the CEQ does not have authority to enforce its regulations, courts often grant considerable deference to its guidelines.

The **Agency for Toxic Substances and Disease Registry (ATSDR)** (<http://www.atsdr.cdc.gov>), an agency of the U.S. Department of Health and Human Services, is the principal federal public health agency involved with hazardous waste issues. It is the lead agency which implements the health-related provisions of CERCLA, and it is charged under the Superfund Act to assess the presence and nature of health hazards at specific Superfund sites. ATSDR also assists the EPA in determining which substances should be regulated and the levels at which substances may pose a threat to human health. The ATSDR's **Toxic Substances Portal** (<http://www.atsdr.cdc.gov/substances/index.asp>) provides access to information about toxic substances and how they affect our health.

The **United States Department of the Interior** (<http://www.doi.gov/>) is the nation's principal conservation agency, and maintains most of our nationally owned public lands and natural resources. Established in 1849, the Department of the Interior is comprised of a number of bureaus and offices including the Bureau of Indian Affairs, the Bureau of Land Management, the Bureau of Reclamation, the Fish and Wildlife Service, the U.S. Geological Survey, the Minerals Management Service, the National Park Service, the Office of Surface Mining, the Office of Insular Affairs, and the Office of the Secretary.

### **III. North Carolina and Other State Materials**

Despite the importance of federal environmental law, state and local governments have responsibility for enforcing most environmental laws. Generally, states are the primary authority

for issuing permits and enforcing the laws subject to federal intervention only if they do not enforce environmental laws effectively enough. At the state level, an environmental agency carries out the pollution control laws, whereas an agriculture agency often handles regulation of pesticides. In most communities, the responsible agency is the city or county health department.

For more information on the states' involvement with environmental regulation, see Selmi & Manaster's *State Environmental Law* (KF3775.Z95 S45 1989; also available on Westlaw: STENVNL). This treatise explains the role of state and local governments in the implementation of federal environmental law, and also discusses environmental laws within specific states.

The agency in North Carolina with the primary responsibility for environmental issues is the North Carolina Department of Environment and Natural Resources (DENR) (<http://portal.ncdenr.org/web/guest/>). Additionally, the EPA has divided the United States into 10 regions (<http://www.epa.gov/epahome/whereyoulive.htm#regiontext>). Each EPA Regional Office is responsible within selected states for the execution of EPA programs. North Carolina is in Region 4 (<http://www.epa.gov/region4/>).

### **A. North Carolina Environmental Laws**

North Carolina's environmental laws are found in the *General Statutes of North Carolina, Annotated*, located in the North Carolina Alcove, and available online at <http://www.ncleg.net/gascripts/Statutes/Statutes.asp>. Most North Carolina environmental laws are found in Chapters 113 (Conservation and Development), 113A (Pollution Control and Environment), and 143, Article 21B (Air Pollution Control). Some of the key North Carolina environmental statutes are listed below:

- Air Pollution Control, Chapter 143, §§ 143-215.105, et. seq.
- North Carolina Environmental Policy Act of 1971, Chapter 113A, §§ 113A-1, et. seq.
- Solid Waste Management law, Chapter 130A, §§ 130A-290, et. seq.
- Hazardous Chemicals Right to Know Act, Chapter 95, §§ 95-173, et. seq.
- North Carolina Drinking Water Act, Chapter 130A, §§ 130A-311, et. seq.
- Oil Pollution and Hazardous Substances Control Act of 1978, Chapter 143, §§143-215.75, et. seq.
- Water and Air Resources, Chapter 143, §§ 143-211, et. seq.

### **B. North Carolina Environmental Regulations**

North Carolina's environmental regulations are found in the *North Carolina Administrative Code*, located in the North Carolina Alcove, and available online at <http://reports.oah.state.nc.us/ncac.asp>. Some of the key environmental regulations are listed in Title 15A (Department of Environment, Health and Natural Resources); Title 1 (Department of Administration), Chapter 25 (North Carolina Environmental Policy Act); and Title 4 (Department of Commerce), Chapter 18 (North Carolina Hazardous Waste Management Commission).

### C. Secondary Sources

Locate additional materials in the **Duke Libraries Catalog** (<http://search.library.duke.edu/>) with a subject search for *Environmental law—North Carolina*.

***Basics of Environmental Law*** (KFN7754.A75 B37 2003). A North Carolina Bar Association Foundation publication which contains an overview of primary federal and state environmental laws, underground storage tank regulations, criminal enforcement, environmental science, environmental audits, and the North Carolina Administrative Procedure Act.

***Environmental Legislation and Regulatory Update*** (KFN7754.Z9 E54 2004). A North Carolina Bar Association Foundation publication which covers North Carolina environmental legislation as well as significant federal environmental case law, legislation and regulations.

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