

Environmental Law



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CHAPTER 1

AN OVERVIEW OF ENVIRONMENTAL LAW

Environmental law is an expansive and rapidly evolving area of legal practice. It has traditionally been thought of as an area of law that encompasses the two broad categories of regulation of pollutants and natural resource conservation/ allocation. However, it also touches on energy, agriculture, real estate, and land use, and has expanded to include international environmental governance, corporate law, international trade, environmental justice, sustainable growth and development, food law, and climate change. Environmental law practice often requires extensive knowledge of administrative law as well as aspects of tort law, property law, legislation, constitutional law, and land use law.

Directories and career guides sometimes distinguish between environmental law and natural resources law. Natural resources law is typically defined as the body of law governing the

acquisition, ownership, development, allocation and conservation of naturally occurring resources like water, oil and natural gas, minerals, wildlife, crops, and forests. This includes the areas of energy law, mining, fishing, and forestry regulation and relates to a number of common law doctrines including riparian rights, nuisance, and public trust. Environmental law is a broader category incorporating both resources law and the law of pollution control, which regulates human environmental impact. Federal and state statutes such as the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and the Toxic Substances Control Act largely dictate the confines of this body of law. This guide will discuss both bodies of law as “environmental law.”

Environmental lawyers generally practice one or more of the following kinds of law: regulatory, transactional, litigation, or public policy advocacy. Regulatory lawyers help draft environmental legislation and regulations relating, for example, to waste cleanup, air quality, water quality, coastline management, land use, and other protective measures; they also take part in site inspections, advise clients on compliance with environmental laws and regulations, and provide representation in administrative and rulemaking proceedings related to the development and implementation of environmental policies and procedures. Transactional attorneys help identify the environmental and land use issues involved in a variety of transactions, including the purchases and sale of property and businesses; they often draft agreements, engage in negotiations, assess the costs and risks of decisions that impact the environment or implicate environmental law, and help clients develop solutions to environmental problems that could affect business transactions. Litigating attorneys bring cases on behalf of individuals, groups, or government entities to enforce environmental laws and regulations; they also litigate with insurance carriers for coverage of environmental liabilities and defend against agency enforcement actions as well as toxic tort lawsuits. Other environmental attorneys work at many levels to influence the development of public policy—sometimes focusing on specific issues in an area of the environment, like species protection or water pollution prevention and sometimes focusing on broader issues like sustainable strategies (a set of actionable steps that a company takes to improve their impact on the community and the environment), alternative energy sources, or green initiatives; they frequently engage in organizing and lobbying to affect policy.

Environmental law attracts lawyers who are interested in how we impact the geology and biodiversity of our planet. Environmental law practitioners perform a wide variety of functions, often helping to shape governmental and corporate policies and actions on a national and international level. Since federal statutes drive much of environmental law in the United States, attorneys often work for or with administrative bodies, such as the Environmental Protection Agency, the Department of the Interior, the Department of Agriculture, and their state-level equivalents. However, environmental lawyers also work for nonprofit organizations, private law firms, and corporations; many environmental attorneys work in several of these settings during the course of their careers. The following is a brief overview of these settings, accompanied by examples of each.

A. Government

1. Federal Government

The federal government employs a large number of environmental lawyers in a range of settings. Several executive branch administrative agencies take part, either directly or indirectly, in implementing and enforcing federal environmental law. These agencies are responsible for managing and preserving natural resources and ensuring that private and government organizations comply with federal environmental statutes. Lawyers in these agencies help to develop policy, assist in the drafting of legislation and regulations, represent the agencies in hearings before courts and administrative law judges, enter into negotiations and write agreements, and monitor compliance with environmental statutes and regulations. In some agencies, the legal functions are handled by a single office, and in others they are divided (e.g., enforcement may be handled separately from counseling on administrative law).

Several federal departments and agencies are responsible for specialized areas of environmental and natural resource policy. For example, the Department of the Interior operates the National Parks, administers federal mining leasing programs, and manages federal lands. The Department of Agriculture, through the Forest Service, also manages vast tracts of federal land. The Department of Energy (DOE) influences and develops national energy policy. The DOE also has environmental lawyers working on the cleanup of government facilities where nuclear testing and weapons production has been undertaken.

The Environmental Protection Agency (EPA) is responsible for overseeing the implementation and enforcement of key environmental regulatory statutes, such as the Clean Water Act and the Clean Air Act. In this capacity, the EPA often delegates enforcement authority to individual states and reviews the performance of state regulators. It also promulgates regulations and issues guidance documents to assist states and the regulated community and brings its own enforcement litigation where necessary. EPA lawyers perform a mix of counseling and litigation and work closely with the Department of Justice (DOJ) in environmental litigation. The Department of State has an environmental section that draws on principles from both international and domestic law to develop an effective environmental foreign policy.

Other executive branch agencies deal with environmental law and policy, albeit less directly. For example, the Department of Transportation, the Occupational Safety and Health Administration, and the Food and Drug Administration all have environmental lawyers on staff to ensure compliance on matters like toxic waste management, worker safety, and herbicide and pesticide regulation. The Department of the Army employs environmental law experts to assist and advise the Army Corps of Engineers, which, among other things, issues permits for use of U.S. navigable waters and wetlands. The Department of Commerce has environmental lawyers in its National Oceanic and Atmospheric Administration.

These agencies tend to focus on administrative proceedings but also work closely with DOJ attorneys, who handle most federal environmental litigation, to secure compliance with the laws and regulations that the agencies are charged with administering and enforcing. In addition to

civil enforcement, U.S. Attorneys may also prosecute individuals and organizations for criminal violations of certain federal environmental statutes. DOJ attorneys also represent the U.S. as a defendant in environmental lawsuits brought by private organizations or individuals. Within DOJ, the Environment and Natural Resources Division has responsibility for all environmental, land management, and natural resources litigation on behalf of the federal government.

Environmental attorneys also shape environmental law in the legislative branch. For example, attorneys work on the staffs of the House and Senate committees with significant environmental jurisdiction (e.g., the House Committee on Resources, the House Committee on Energy and Commerce, the Senate Committee on Environment and Public Works, and the Senate Committee on Energy and Natural Resources).

2. State Government

State environmental agencies play a leading role in implementing both federal environmental statutes and state regulatory regimes. Examples of such agencies include the Florida Department of Environmental Protection, the Texas Commission on Environmental Quality, the Massachusetts Department of Conservation and Recreation, and Connecticut's Department of Energy & Environmental Protection. Agency counsel may be involved in drafting legislation, designing regulatory systems, monitoring compliance, educating the public, enforcing existing statutes, and furthering environmental policy. Utility regulatory commissions also play a major role in developing energy policy in most states.

Another avenue for practicing environmental law in state government is through the environmental department of the state Attorney General's office. The Attorney General in all states can file lawsuits on behalf of a state environmental agency, and many states provide the Attorney General's office with jurisdiction to bring environmental lawsuits directly. The [National Association of Attorneys General website](#) lists the websites of state attorneys general with information on the environmental department of each office and its arrangement with state environmental agencies.

3. Local Government

Large urban areas often have municipal environmental agencies that employ in-house counsel. The New York City Department of Environmental Protection, for example, has a Bureau of Legal Affairs where attorneys are involved in maintaining and upgrading the city's water and wastewater infrastructure, advising the city on compliance with federal and state environmental laws, protecting the city's watersheds, as well as enforcing local codes governing air and noise pollution, asbestos abatement, and emergency spill response. City law departments, like the New York City Law Department, sometimes have environmental bureaus. In addition, many cities and towns have local planning, zoning, conservation, and wetlands commissions, which employ attorneys or contract for their services. City councils may also be actively engaged in the development of local environmental law and policy and employ legal staff to undertake this work.

Municipal attorneys and agencies serve many of the same functions as the state and federal agencies, but they focus on more localized resources and local ordinances. For example, municipal environmental attorneys frequently play a role in waste disposal issues that affect their municipalities.

B. International Organizations

Environmental issues, like deforestation, over-fishing, and damage to the ozone layer, are often worldwide problems. Emerging economies add to global concerns as they struggle to balance environmental needs with the growing demand for new products. Foreign governments, multinational bodies, nongovernmental organizations (NGOs), and international corporations all employ lawyers with environmental expertise to help address these widespread problems. The World Bank, World Trade Organization, U.N. Environmental Program, and Treaty Secretariats are just some examples. As the world becomes more interdependent, international laws become more extensive, and the climate crisis grows, opportunities to practice environmental law on a global scale are becoming more common.

Like environmental lawyers in the United States, international environmental lawyers handle a wide range of issues. Lawyers at the Center for International Environmental Law (CIEL), for example, work on climate change, human rights and the environment, international financial institutions, international environmental governance (including democratizing international dispute settlement), law and communities, trade, toxins, and sustainable development. Among other things international environmental lawyers may seek to strengthen international environmental protections by negotiating and drafting international treaties and agreements that address global environmental problems; they may bring lawsuits challenging environmental violations in international courts or seek to resolve disputes in arbitration tribunals; they may develop new strategies and standards to improve financial regulations that impact environmental concerns and increase corporate accountability; and they may work to empower local communities to address the impact of environment-related activities on their rights.

The differences among environmental organizations make it important for applicants to research organizations carefully to find the best fit.

C. Nonprofit Environmental Organizations

Nonprofit environmental organizations seek to shape the development and implementation of national, international, state, and local environmental policy. Their activities include litigation, negotiation, policy development, lobbying, research, education, public campaigns, and direct collaboration with industry. Some seek to cooperate with government entities and to shape law,

regulations, and policies from the inside. Others are more confrontational in their approach, working as outside critics.

Though few environmental groups fit into neat categories, there are several broad areas of distinction. Some groups, especially the larger ones, have a very diverse practice. Well-known examples are the Natural Resources Defense Council and the Environmental Defense Fund, both of which employ a wide variety of professional staff, including lawyers, scientists, economists, and technical experts, and undertake the full array of environmental advocacy work to advance policy and market solutions. Organizations like Earthjustice have more specialized litigation practices that focus on representing other environmental and citizen groups in court.

Many major groups are not litigation-centered and instead focus their work on education, research, lobbying, and grassroots action with the intention of improving and enforcing environmental laws and regulations and bringing greater public attention to environmental issues. Greenpeace, Sierra Club, Environment America, and Clean Water Action exemplify this orientation. Since these grassroots organizations focus more on developing lobbying power, they tend to be less attorney-driven than the litigation-focused groups.

Another type of organization focuses on specific issues or a specific environmental resource. For example, Conservation International, The Nature Conservancy, and the Open Space Institute work to protect specific ecosystems from destructive impacts of development, in large part by purchasing land or securing protective easements. The National Wildlife Federation and Defenders of Wildlife focus on habitat protection and restoration. The Audubon Society works to protect bird habitats. The Adirondack Council and the various Riverkeepers and Baykeepers work to improve the quality of geographically specific natural resources. In addition to these high-profile national organizations, many organizations, like the Connecticut Fund for the Environment, Environmental Advocates of New York, and the Natural Resources Council of Maine, focus on local, state, or regional concerns.

Though most environmental groups are advocacy organizations, some operate more as think tanks that employ attorneys and scientists to conduct research and policy analysis, participate in drafting of domestic and foreign regulations, track and document developments in federal or international environmental decision-making, and build the capacity of nations to advance and implement environmental law and policy. Examples include the World Resources Institute and the Environmental Law Institute. Unlike most other national organizations of their stature, they engage in neither lobbying nor litigation but work to forge cooperative relationships across sectors by joining governments, industry, and public interest groups in dialogue about pressing environmental problems. Lawyers interested in research and policy analysis also work in academic settings teaching environmental law, studying environmental problems, writing, and consulting.

In addition to the national organizations that undertake some international environmental work, there are several nonprofit organizations, such as EarthRights International, that focus on international environmental issues. For additional information about international opportunities, see *The International Public Interest Law Guide*.

D. Law Firms

There are many opportunities for attorneys to practice environmental law in the private sector. Environmental lawyers work in the environmental or natural resources departments of general law firms, boutique firms that specialize in environmental law or in handling niche environmental issues, environmental consulting firms, or firm sponsored pro bono activities.

The environmental or natural resources practice group at a firm might handle the representation of clients such as oil and gas companies, mining companies, industrial corporations, lumber and paper companies, electric or natural gas utilities, construction companies, or waste disposal companies. In the modern regulatory environment, environmental laws affect almost all businesses. The varied activities of a firm lawyer representing such a company might include negotiating contracts in conformance with environmental regulations, advising companies as to their compliance obligations with respect to environmental laws, handling real estate transactions, working with zoning laws, obtaining permits, and handling enforcement actions. Some firms also lobby and litigate to shape environmental policy.

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or the Superfund Law), environmental lawyers have also been working on Superfund cases for over 20 years to clean up contaminated sites. Due to the significant progress that had been made, direct Superfund work, which can entail litigation, negotiation, or real estate counseling, may be somewhat on the decline. On the other hand, CERCLA and federally mandated hazardous waste handling and disposal programs have necessitated detailed environmental reviews of virtually every business and real estate transaction for potential environmental liabilities and issues. This due diligence requirement has created an increasingly vital and vibrant domestic and international practice area.

Typically, U.S. businesses manifest a compliance ethic and seek to avoid enforcement actions by maintaining vigorous internal compliance programs. However, environmental lawyers in private firms may also find themselves defending their clients from lawsuits by a governmental agency or nonprofit organization.

Public interest law firms are private, usually small firms that represent municipalities, NGOs, citizen groups, and individuals in actions and advocacy that promote the public interest. These firms are, for example, hired by environmental nonprofits to assist in litigation, policy development, or other work, and may also represent individuals, or citizen groups, in environmental actions ranging from toxic torts to zoning challenges. Many of these firms are listed on [PSJD](#). You can also find information on CDO's [website](#). [Martindale-Hubbell](#) and the [NALP Directory of Legal Employers](#) are two online resources for locating law firms with environmental practices.

E. Corporate Counsel

An environmental lawyer may serve as in-house counsel for a company that regularly deals with environmental law and regulation. In-house legal departments for smaller companies employ fewer attorneys, requiring each attorney to work across a range of legal specialties. Larger corporations may have enough need for in-house environmental attorneys to allow for specialization. Environmental lawyers often work as in-house counsel for oil, gas, mining, and manufacturing companies, but environmental lawyers can be found in any company whose products or activities might have an impact on the environment, including start-up companies seeking alternative solutions to environmental problems.

An in-house lawyer's activities generally mirror those of a firm lawyer representing the same type of company, but involve a more intricate knowledge of the company. The corporate attorney tends to have considerable contact with other environmental professionals, especially those employed by or consulting for the corporation, in a problem-solving atmosphere. A corporate attorney routinely works with technical professionals to achieve and maintain compliance with environmental regulations and to identify and address environmental considerations related to business and real estate transactions. Legal work might include analyzing new regulations and legislation to assess their impact on the company's activities, supporting in-house efforts to achieve compliance with environmental regulations, helping obtain permits and licenses, drafting business practices, overseeing on-site government inspections, training company personnel about environmental regulations, reviewing and maintaining relevant legal documents and contracts, and participating in litigation. Activities generally left to outside private attorneys include active litigation in state and federal court, involvement in novel issues, and highly visible or contentious business and real estate transactions.

In-house practice gives the attorney a greater opportunity to link his or her legal practice with business planning and strategies. The corporate attorney must be concerned with long-term risk in lending, capital formation, acquisition, and development activities due to environmental issues. In-house environmental legal jobs can lead to environmental management positions, as well as opportunities to set corporate environmental policy and to manage both legal and technical professionals in the field. In addition, jobs with large, responsible multinational corporations offer opportunities in international environmental law practice.

F. Conclusion

Environmental law deals with some of today's most pressing issues. It concerns not only environmental problems but also important social justice questions, such as relationships between the environment and poverty or equality. Environmental law offers attorneys a wealth of opportunity to have a positive impact on public interest as we struggle domestically and internationally to find the proper balance between environmental preservation and economic

stability. The work of environmental attorneys in the different settings described above may well shape the nature of our world for generations to come.

Choosing among these varied practice settings involves a number of considerations. Perhaps, most obviously, private firms and corporations typically offer higher compensation than government and public interest organizations. Salaries may also vary regionally with compensation being typically higher in states with strong interests in environmental preservation or allocation of natural resources, like Alaska and Colorado. Lawyers for international bodies earn salaries comparable to those at U.S. government agencies but may enjoy limited U.S. taxation if they work abroad. Additionally, the legal activities in each setting vary. Some environmental organizations specialize in education and grassroots efforts; government attorneys tend to focus on drafting and implementing regulations and other aspects of administrative law; and those working for Attorneys General and U.S. Attorneys are likely to focus on litigation and enforcement activities.

It is important to think about which side of the issues you would rather represent. In litigation, lawyers for nonprofit organizations generally represent plaintiffs. Government attorneys may represent plaintiffs such as federal or state environmental agencies or may defend the government in actions brought by nonprofit organizations, among others. Public interest law firms would most commonly represent individuals or organizations as plaintiffs. Private firm lawyers representing corporations and corporate in-house counsel who litigate most often represent defendants.

It is always helpful to ask alumni and student mentors about their experiences in environmental law. Alumni mentors are available through [The Courtyard](#).

Although solid research is the best foundation for any career choice, keep in mind that many or most modern lawyers have a variety of jobs over the course of their careers. Environmental attorneys often move between and among the varied sectors of environmental law practice.

CHAPTER 2

RESOURCES WITHIN THE YALE COMMUNITY

Yale Law School and other graduate schools at Yale offer a number of useful resources for students interested in environmental law. Graduates and faculty experienced in the field can be a valuable source of information and advice. Additionally, student organizations, academic programs, and coursework in the Law School and the Yale School of Forestry and Environmental Studies offer other avenues for obtaining information and working with other students.

A. The Courtyard

One of the most important resources at YLS is our alumni community. YLS has over 12,000 alumni working in virtually every corner of the globe. When deciding where to work, or when considering career transitions, be sure to tap into these alumni for information. The best way to connect with alumni is through [The Courtyard](#), where students can connect with alumni, find mentors, and engage with student organizations. We encourage you to reach out to alumni of interest through the Courtyard to network and foster new mentorship opportunities.

B. Faculty Mentors

Faculty can provide information, advice, and support to students considering public service career paths. In-depth contact with faculty beyond the classroom setting can also assist in obtaining a personalized recommendation. A non-exhaustive list of environmental law faculty at YLS can be found [here](#).

C. CDO Resources:

View the [Program Videos](#) produced by the YLS Career Development Office, including *11 Summer Opportunities in Environmental Law Panel Discussion*.

D. Student Mentors

Talking to fellow students and YLS alumni about their summer experiences with environmental law organizations may also be a useful means of advancing your job search. CDO's [Summer Employment Lists](#) will provide you with a solid foundation for your outreach.

E. Environmental Organizations and Programs

Yale Environmental Law Association (YELA)

This student group focuses on creating a dynamic forum for interdisciplinary environmental thinking at Yale. YELA sponsors speakers, debates and activities to promote awareness of environmental issues. YELA has facilitated events on environmental justice, food policy, and international environmental law, as well as periodic YELA-organized reading groups and

outreach to the Yale and New Haven communities. YELA also organizes hikes, field trips, and social events.

Yale Food Law Society

This student group is a nonpartisan community that promotes the newly emerging study of food and agriculture law. The group seeks to understand and disseminate information about how law and policy tools can be used to address the environmental, health, safety and economic impact of food production and distribution. The Society advocates sustainability in food systems, organizes reading groups, and sponsors speakers.

The Yale Center for Environmental Law and Policy

The Yale Center for Environmental Law and Policy, established in 1994 by YLS and the Yale School of Forestry and Environmental Studies, seeks to advance fresh thinking and analytically rigorous approaches to environmental research and policy. The Center is focused on three program areas: the Environmental Performance Measurement program, the Environmental Law and Governance program, and the Innovation and Environment program.

Joint Degree Program with the Yale School of Forestry and Environmental Studies

A four-year joint JD and environmental master's degree program is available. Students must apply independently to both schools and then receive approval through the YLS joint degree committee on special courses of study.

Goldman Sonnenfeldt Environmental Protection Clinic

The Goldman Sonnenfeldt Yale Environmental Law Clinic is an interdisciplinary clinic that is a joint enterprise of YLS and the Yale School of Forestry and Environmental Studies. Launched in 1994 by Professor Daniel C. Esty, the Clinic is designed to introduce students to the fields of environmental advocacy and policy—as well as the benefits of public interest work more generally. The centerpiece of the Clinic is hands-on experience with real world projects that take students beyond traditional academic research and writing into the world of complex negotiation, political, economic, and policy analysis, strategic planning, and community service. Clinic clients include national, state, and local environmental organizations, think tanks, government agencies, international organizations, and local citizen groups.

The Center for Business and the Environment at Yale (CBEY)

Established by the Yale School of Forestry & Environmental Studies and the Yale School of Management in 2006, CBEY provides a focal point for research, education, and outreach to advance business solutions to environmental problems. CBEY seeks to connect students, executives, academics, and policymakers. The Center provides visibility to experts and catalyzes innovative, pragmatic ideas that will shape the future of both business and the environment. The Center's current research areas include Environmental Finance and Economics, Market Frameworks and Governance, Corporate Strategy and Governance, Industrial Ecology, and Investments in Land and the Ecosystem.