

Nothing Dismal About It: Researching Environmental Law Without Getting Swamped

by Jennifer Sekula



A client of yours—a developer who owns several hundred acres of land abutting the Chesapeake Bay—calls you in a state of agitation. Her company has run into obstacles with its plans to build the region's first multimillion dollar superstore on the property. The land has changed since your client first bought it. What was once a fairly well-drained forest now contains standing pools of water replete with cattails and other marsh plants. Nesting waterfowl have been spotted. Your client suspects that the changes may have been caused by development over the last decade—development that altered the surrounding parcels' drainage patterns and affected the water table. She thinks, too, that Hurricane Isabel affected her property when it passed through in 2003, amplifying the damage allegedly caused by the neighboring developers.

Your client informs you that she's having problems getting permits from local authorities to begin construction. To make matters worse, a chapter of an environmental group is investigating whether to attempt to obtain an injunction to prevent her from developing the land.

You've represented your client in a number of matters, but none involved environ-

mental law beyond the scope of standard land use and zoning considerations. You have little experience with the topic. You know that environmental and land use issues can involve state, federal and local laws, so your research may lead you to all three levels of government. Visions of statutes, ordinances, impact statements, regulatory guidelines, surveyors' maps and soil sample reports dance before your eyes. Where on earth do you start?

Start with Legal Analyses

A common mistake when approaching a new legal topic is to try to locate all of the statutes and cases immediately. Finding good commentary and analysis of the law will save time. Frequently consulted general environmental treatises are *Treatise on Environmental Law* by Frank P. Grad (Matthew Bender);, *Environmental Regulation of Land Use* by Linda A. Malone (Thomson West), and *Law of Environmental Protection* by Sheldon M. Novick, ed. (Thomson West). Grad's *Treatise* is the largest. It devotes entire volumes to topics such as air and water pollution, solid waste, land use and noise. Grad includes reprints of major environmental statutes and rules in a "Primary Materials" section.

Malone analyzes the confluence of environmental and land use regulation, with

chapters on air and water quality, wetlands, soil conservation and coastal management. Novick's three-volume book is more procedural and includes discussions of agencies' approaches to environmental decision-making, the use of permitting systems and standards, and state and federal interactions.

There are also a number of treatises on specific areas of environmental law. The attorney faced with a situation similar to the one described above might find William L. Want's *Law of Wetlands Regulation* (Thomson West) or *Wetlands Law and Policy: Understanding Section 404* by Kim Diana Connolly, Stephen M. Johnson, and Douglas R. Williams (American Bar Association Section of Environment, Energy and Resources) to be helpful.

Analyses of Virginia environmental law are less current than national treatments. For example, the *Virginia Environmental Law Handbook* (3rd ed., by Mays and Valentine LLP, published by Government Institutes) is an excellent practitioner's guide that describes how various state and federal laws operate, how to meet baseline standards and how to apply for permits—but the guide was last published in 1999. It remains useful, but be sure to check for changes in the underlying statutes and regulations. *Environmental Compliance*

(Business and Legal Reports Inc.) is more current and is a compliance manual for professionals. It offers less analysis of the law than the *Handbook*, but provides specific requirements. As an example, the “Effluent Limitations” section includes a table of industries and what types of discharges they must monitor.

Many Virginia CLE materials on environmental law are out of date; updating likely will be necessary. Occasionally, environmental matters are treated along with other related topics in Virginia CLE publications. The 2004 *Land Use Law in Virginia* (Virginia Law Foundation) contains a chapter entitled “Environmental Issues in Land Use Law.”

Practitioners should be aware of the Annual Survey of Virginia Law published in the *University of Richmond Law Review*. The survey includes a briefing on the changes to state and federal environmental statutes and regulations as well as discussions of recent cases and trends.

Check www.westlaw.com or www.lexis.com for articles from other sources. A search in *Westlaw.com*'s “Journals and Law Reviews” database (similar to *LexisNexis.com*'s “U.S. Law Reviews and Journals, Combined” database) turns up the environmental law article from the *University of Richmond Law Review*'s 2004 survey,¹ an analysis of the Virginia Nontidal Wetlands Resources Act,² and a recent American Law Institute-ABA Course of Study paper on state wetlands regulation, which includes a good summary of Virginia law.³

Find Primary Sources Online

Once you have an orientation, it will be easier to track down the laws, cases, reports and other documents relevant to your client's situation. The following are online resources for acquiring different types of environmental materials.

U.S. Environmental Protection Agency

<http://www.epa.gov>

The U.S. Environmental Protection Agency's Web site is the source for the agency's reports, statistics and other docu-

ments. Statutes and docket details are also available, along with interactive maps, community information and an employee directory. Use this site after you have identified specific types of documents to retrieve. The site organization and search features are fairly reliable, and with a few clicks you can often determine the answer to the question “Do they have any reports on my topic?”

The front page of the Web site contains a navigation bar down the left of the page, a topical “Quick Finder” across the top and a search box just above the Finder. “Browse EPA topics” on the navigation bar allows the user to find the appropriate EPA division's home page based on a familiar interface (akin to *Yahoo.com* and Westlaw's directory format). “Laws, Regulations and Dockets” takes the user to a list of links to those resources, and “Where You Live” is the gateway to regional and community information, including enforcement and compliance histories, maps of pollution sources and the Toxic Release Inventory.

“Information Sources”—also on the left navigation bar—leads options including “Publications” and “Databases and Software” that access thousands of EPA documents, databases and compliance tools.

The EPA has the most extensive selection of environmental documents. But, other federal agencies are involved with environmental issues, and they make many of their reports, filings and other documents freely available. Check for relevant documents on the Web site of any other agency that might have jurisdiction or an interest in the subject.

EnvironmentalLawNet.com

<http://www.EnvironmentalLawNet.com> or

<http://lawvianet.com>

Environmental Law Net, managed by David S. Blackmar at New England law firm Murtha Cullina LLP, serves both the neophyte and the experienced environmental lawyer. This free Web site offers comprehensive points of access to several types of environmental legal materials. Links are organized into six groupings:

laws and regulations; court and agency decisions; agency documents and databases; compliance; enforcement litigation; and transactions. The first two of these link to federal and state statutes and cases, regulations, treaties and tribal laws. Federal and state environmental agency decisions are also available through the site. Under “Agency Documents” are links to federal, state and international reports and databases—arranged by jurisdiction and topic. The remaining three groupings access compliance manuals and forms, regulatory checklists and due diligence materials.

“Desk Reference” links to environmental organization home pages, business research tools, legal writing and research resources and directories.

The site offers browsing of reports and other documents by topic rather than by agency. This is useful when you don't know which agency's site might include a particular item.

Virginia Department of Environmental Quality

<http://www.deq.state.va.us> or

<http://www.deq.virginia.org>

This site contains Virginia statutes and regulations as well as reports and presentations the agency has created for the General Assembly. It includes enforcement manuals and orders, permit information and forms.

The real gems on this site are located using the list of topics accessed by clicking on the “Programs” link on the side navigation bar. Here, you can find reports, databases, guidance and forms from various DEQ offices and programs—such as Clean Air and Brownfields. At the time of the publication of this article, the Wetlands program was omitted inadvertently from the list. Find it at <http://www.deq.virginia.gov/wetlands>.

The DEQ maintains a list of other Virginia natural resources agencies and programs, which can be located by clicking on the “Links” heading on the main page sidebar.

Local Laws

<http://www.municode.com> (Municipal Code Corporation)

http://www.spl.org/default.asp?pageID=collection_municodes (Seattle Public Library)

For environmental issues that involve local ordinances, consult city or county codes. These can be found online for free at either the Municipal Code Corporation's Web site or the Seattle Public Library's Municipal Codes collection. The MCC site contains available Virginia ordinances. Click "Online Library" near the upper left corner.

CRS Reports for Congress

<http://www.ncseonline.org/NLE/CRS>

The Congressional Research Service (CRS) reports and other studies prepared for Congress are lesser-known but incredibly useful resources. These papers assess current laws and scientific information and analyze potential consequences of proposed legislation. The reports were once confined to nearly mythological status due to their rarity in the public domain, but are now readily available. The National Council for Science and the Environment maintains a growing, searchable collection of free CRS reports on natural resources and the environment.

Multi-purpose Reporters

The resources that follow below are modernized versions of loose-leaf services. They collect laws, cases and agency materials—along with some news and commentary—and present them in one-stop packages. The unique features of each are highlighted.

Environmental Law Reporter

<http://www.elr.info> (subscription required)

The Environmental Law Institute's *Environmental Law Reporter* includes cases, statutes, treaties, executive and administrative materials, and commentary. It publishes in-depth discussions of specific environmental issues, featured in the "News and Analysis" section, and it provides access to litigation materials—summaries of briefs and other hard-to-find documents—the full text of which can then be ordered directly from the institute (or use your favorite search engine to track down any potentially free online ver-

sions). The Web site is arranged by jurisdiction and type of material, and includes the *ELR Update*, a newsletter issued thirty-six times a year, and the *ELR Daily Update*.

Environment Reporter

(Bureau of National Affairs)

www.bna.com/products/ens/erocr.htm

(subscription required)

The BNA's *Environment Reporter* excels at gathering primary materials. It features state and federal statutes and cases that are available and administrative documents. The online *Environment and Safety Library* contains many of the same materials and is relatively easy to use. For firms that do not subscribe to the entire package, however, that simplicity is cluttered by the presence of active or grayed-out links to unavailable documents and libraries, which can fool the unwary user.

BNA provides an environmental news e-mail service for *Environment and Safety Library* subscribers.

Conclusion

Environmental legal research can be tricky. Complex interactions between federal, state and local laws—as well as the need to obtain and understand scientific data—complicate the most straightforward environmental or land use question. This article has introduced resources that will help you to navigate through the thickets. But remember, if you get mired in the swamp, call a librarian. ♪

Endnotes:

- 1 Benjamin A. Thorpe, IV & William K. Taggart, *Environmental Law*, 39 U. Rich. L. Rev. 203 (2004).
- 2 Caleb A. Jaffe, *Tragedy of the Wetlands Commons: What the Virginia Nontidal Wetlands Resources Act Says about the Future of Environmental Regulation*, 20 Va. Envtl L. J. 329 (2001).
- 3 Jeanne M. Christie, *State Wetland Programs*, ALI-ABA Course of Study 329, 333-343 (June 9-10, 2005).



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