

**ENVIRONMENTAL
INFORMATION:
RESEARCH, ACCESS
& ENVIRONMENTAL
DECISIONMAKING**

by Sarah Lamdan

ENVIRONMENTAL LAW INSTITUTE
Washington, D.C.

Copyright © 2017 Environmental Law Institute
1730 M Street NW, Washington, DC 20036

Cover design by Davonne Flanagan.

Published May 2017.

Printed in the United States of America
ISBN 978-1-58576-185-2

Contents

About the Author	xi
About the Editor	xi
Acknowledgements.....	xiii
Foreword	xv
Chapter 1: Introduction to Environmental Information.....	1
I. Why This Book?.....	3
II. What Is Environmental Information?.....	4
III. Types of Environmental Information	7
A. Legal Information	7
B. Grey Literature	7
IV. Environmental Information’s Role in Environmental Decisionmaking	9
Chapter 2: Overview of Environmental Law.....	13
I. History of Environmental Law in the United States	14
II. Creation of EPA	17
III. Types of Environmental Laws	19
IV. Summary of Major Environmental Laws.....	22
A. Informational and Planning Laws	22
B. Media-Specific Pollution Control Laws	26
C. Chemical Tracking Laws	32
D. Cleanup Liability Laws	39
E. Resource Management Laws.....	43
F. Public Participation: Citizen Suits.....	45
V. The Spectrum of Federal Environmental Regulation.....	46
VI. States’ Roles in U.S. Environmental Regulation.....	46
VII. Conclusion.....	48

- Chapter 3: Researching Environmental Law 49
 - I. Legal Research Basics..... 50
 - A. Primary v. Secondary Sources..... 50
 - 1. Types of Primary Sources..... 50
 - 2. Types of Secondary Sources 53
 - B. Finding Specific Primary and Secondary Sources 55
 - 1. Finding Secondary Sources..... 56
 - 2. Finding Primary Sources 59
 - II. Legal Research Process: How to Conduct Legal Research..... 70
 - IV. Researching Environmental Law..... 73
 - A. Statutes 74
 - B. Regulations 74
 - C. Cases 75
 - D. Secondary Sources..... 75
- Chapter 4: Environmental Laws and Information Access 79
 - I. Overview: Environmental Laws’ Access Provisions..... 79
 - II. Searching EPA.gov 81
 - III. Envirofacts: What Is It, What Does It Cover? 82
 - IV. Accessing Environmental Statute Information 83
 - A. Access to Planning Information 84
 - 1. National Environmental Policy Act 85
 - a. How to Find EIS Documents 85
 - b. Limitations of NEPA EIS Research..... 88
 - 2. EPCRA 88
 - a. How to Access Local Emergency Plans 88
 - b. How to Access Toxics Release Inventory 90
 - V. Access to Hazardous Materials Tracking Information 91
 - A. RCRA Data 92
 - 1. RCRA Biennial Report..... 92
 - 2. RCRAInfo..... 92
 - B. FIFRA Data..... 93
 - C. TSCA Data..... 97

VI.	Access to Statutory Reporting Information	99
A.	Accessing the CWA's Data	100
B.	Accessing the CAA's Data	102
VII.	Accessing Public Notice Statutory Information	104
A.	Comprehensive Environmental Response, Compensation, and Liability Act	104
B.	Labelling Laws	105
C.	Research Challenges	106
Chapter 5: Environmental Information and the Freedom of		
	Information Act	109
I.	What Is the Freedom of Information Act?	109
II.	History of FOIA	111
III.	How FOIA Works	112
A.	Proactive Disclosure	112
B.	Disclosure by Request	113
IV.	FOIA Request Limitations: Statutory Definitions and Exemptions	115
A.	Must Be an Agency	115
B.	Must Be a Record	116
C.	FOIA Exemptions	117
V.	FOIA Best Practices	120
A.	Step 1: Research Your Request	120
1.	Which Records?	121
2.	Which Agency?	122
B.	Step 2: Drafting Your FOIA Request	123
C.	Step 3: Send Your Request	124
D.	Step 4: Track Your Request	125
E.	Step 5: Assess Your Request	126
F.	Step 6: The FOIA Appeals Process	126
VI.	FOIA Resources	131
A.	Books	132
1.	Department of Justice Guide to FOIA	132

- 2. *The Federal Information Manual: How the Government Collects, Manages, and Discloses Information Under FOIA and Other Statutes*... 132
- 3. Federal Information Disclosure 133
- 4. Litigation Under the Federal Open Government Laws 133
- B. Online Resources 133
 - 1. Journalist Organizations 134
 - a. George Washington University’s National Security Archive FOIA Resources..... 134
 - b. MuckRock.com 135
 - c. Reporters Committee for Freedom of the Press..... 136
 - d. Agency Resources 136
 - e. Other Agency Resources 138
 - f. Sample FOIA Requests Online 139
- VII. Conclusion..... 139
- Chapter 6: Federal Transparency Laws Beyond FOIA 141
 - I. Federal Meetings Laws 142
 - A. The Sunshine Act 143
 - 1. Agency 143
 - 2. Meeting 144
 - 3. Access Provisions Under the Sunshine Act 145
 - B. The FACA 147
 - 1. Records Provisions Under the FACA..... 149
 - 2. Advisory Committee Meeting Information Under the FACA..... 150
 - II. Laws Governing the Management of Agency Information 151
 - A. The FRA 152
 - B. The PRA 155
 - C. The FIQA or Data Quality Act 156
 - D. Paperwork Reduction Act 157
 - III. Laws Requiring Finding Aids for Researchers 160

IV.	Laws Restricting Access to Information.....	160
A.	The Records Classification System.....	160
B.	Exceptions: Mandatory Declassification Review Requests.....	162
C.	Exceptions: FERC Critical Energy Infrastructure Information Requests.....	163
VI.	The Privacy Act.....	164
Chapter 7: Rulemaking Documents.....		167
I.	Introduction.....	167
II.	Informal Rulemaking: The Basics.....	169
A.	The <i>Federal Register</i>	170
III.	Informal Rulemaking Records.....	174
A.	Regulations.gov.....	174
B.	Agency Websites.....	175
IV.	Information Access by Rulemaking Phase.....	176
A.	Proposed Rule.....	176
1.	ANPRM.....	177
2.	Negotiated Rulemaking.....	177
3.	Proposed Rulemaking.....	178
B.	Notice-and-Comment Period.....	179
C.	Final Rule.....	180
D.	Codification.....	182
V.	Information Beyond the APA Information Rulemaking Process: Pre- and Post-Rulemaking Records.....	184
A.	Pre-Rulemaking Records.....	184
1.	Directives.....	186
a.	Congressional Directives.....	186
b.	Judicial Directives.....	187
2.	Third-Party Actions and Initiatives.....	188
3.	Public Petitions.....	189
4.	Advisory Committee Proposals.....	189
5.	Rulemaking Agendas.....	190

- B. Post-Rulemaking Review Process 190
 - 1. Congressional Review Under the Congressional Review Act..... 191
 - 2. Executive Review by OIRA..... 192
 - 3. OIRA Return Letters 193
 - 4. OIRA Prompt Letters 194
 - 5. OIRA’s Regulatory Dashboard..... 194
- C. Records Created After a Final Rule Is Issued..... 196
- VI. Conclusion..... 197

Chapter 8: Grey Literature: Other Sources of Environmental Information 199

- I. Introduction..... 199
- II. Other Government Records 199
 - A. U.S. Securities and Exchange Commission Filings: Corporate Disclosure..... 200
 - B. Locating SEC Filings 204
 - C. Other Government Agency Documents..... 204
 - D. Congressional Documents 206
 - 1. Congressional Hearings and Reports 207
 - 2. Congressional Research Service Reports 208
 - 3. Court Information: Litigation/Settlement Information..... 211
- III. Individuals and Corporations: Researching Like a Reporter..... 212
- IV. Searching Nongovernmental and Nonprofit Organizations..... 219
- V. Access to Scientific and Academic Research..... 221
- VI. Searching for Grey Literature: How to Power Up Google Searches..... 223
- VII. Conclusion..... 226

Chapter 9: State and Local Environmental Information Access..... 227

- I. Introduction: Overview of State Environmental Transparency Schemes..... 227
- II. Environmental Information Access in State Laws..... 231

III. Environmental Information Access: State-by-State.....	234
IV. Example of Inconsistency: State Fracking Laws.....	254
Chapter 10: Finding Environmental Information in Other	
Countries: Foreign and International Law.....	257
I. Introduction.....	257
II. Foreign Law.....	258
III. Finding Foreign Laws, Generally.....	259
IV. Information Access Laws in Other Countries.....	261
V. International Law.....	263
VI. Finding Information About International Law	265
VII. Environmental Information Access in International	
Law.....	268
Chapter 11: Making Sense of Environmental Information.....	271
I. Understanding Scientific Data	271
II. “Translating” or Breaking Down Environmental	
Information	272
A. Understanding Environmental Terminology.....	272
B. The Contents of Environmental Records	274
III. The ADEPT Method: Analyzing Environmental	
Information	278
IV. Other Methods for Understanding Environmental	
Information	282
A. Using the Smart Moves Model	283
B. Getting Help From the Experts	284
V. Using Environmental Information to Assess Risks	285
VI. Communicating About Environmental Information	
and Risk.....	288
VII. Conclusion.....	289
Appendix 1: Chronological List of Select Major Federal	
Environmental Statutes and Amendments	291
Appendix 2: U.S. Environmental Protection Agency Regional	
Offices: Contact Information.....	309

About the Author



Sarah Lamdan is an Associate Professor and librarian at the City University of New York School of Law. She received her J.D. from the University of Kansas School of Law with a Certificate in Environmental and Natural Resources Law, a master's degree in Legal Information Management from Emporia State University's Graduate School of Library and Information Management, and a B.A. in English from the University of Kansas. Sarah specializes in government information access and transparency with a focus on environmental agency records, and she teaches legal research,

advanced legal research, and lawyering skills courses. She previously served as research specialist for several international law firms and at Bloomberg Law. Her writing on the Freedom of Information Act (FOIA), information access, and environmental justice issues have been published in the *Kansas Journal of Law & Public Policy*, *Vermont Journal of Environmental Law*, *Government Information Quarterly*, and other legal and information science publications. Sarah also facilitates FOIA workshops and seminars on participating in the federal and New York administrative rulemaking process.

About the Editor

Taryn L. Rucinski is a Branch Librarian for the U.S. Court of Appeals for the Second Circuit for the Southern District of New York Libraries and the former Environmental Law Librarian for the Pace University School of Law. She graduated *cum laude* with her J.D. and certificate in environmental law from Pace in 2010, received her M.L.I.S. with a concentration in law librarianship from St. John's University in 2012, and her B.A. *cum laude* in history from The College of New Jersey in 1999. A former Editor-in-Chief of the *Pace Environmen-*



tal Law Review, she serves as an adjunct professor of law specializing in environmental legal research for Pace and is an adjunct professor of library science for St. John's. Professor Rucinski is also co-author of the Environmental Law Lexicon and has authored a number of articles and research guides related to environmental law. Her research specialties include environmental and cultural heritage law, legal history, and New York law.

Acknowledgements

Thank you to everyone who supported this first ever text dedicated to helping people find and use environmental information and data—this book is the product of years of hard work and insight provided by legal scholars and practitioners, professional researchers, and wonderful friends, family, and students. To my scholarly soulmate, dedicated editor, and all around greatest fellow law librarian partner in environmental research, Taryn Rucinski, thank you for the countless hours you spent wading through facts and citations to make sure that this is the most complete and accurate book possible. I couldn't have written this without you.

Thank you to Susan Nevelow Mart and the *Boulder Conference on Legal Information: Scholarship and Teaching* in San Antonio (2014), Philadelphia (2015), and Chicago (2016). This environmental information text was born at Boulder and incubated there over several years under Susan's leadership and the collaboration, input, and feedback provided by every Boulder attendee. The Boulder Conference facilitates new and innovative legal information writing, and I am proud that this book is a product of such a wonderful collaborative event.

Thank you to the many people who edited and provided feedback to the chapters within this volume. Thank you to the Environmental Law Institute and their publications staff for their help improving and enriching this text. Thank you also to Martha Merson of TERC for her advice on making sense of environmental information. To everyone else who edited this book—Susan Azyndar, Paul Callister, Susan deMaine, Laura Jensen, Nicole Sasaki, and Gail Whittemore—your insight and input made this book better than it was before, and I'm so grateful for the time you spent on this effort.

Thank you to my excellent research assistants Maria Brinkmann, Jonathan Cantarero, Robert Feliu, and April Whitehead. Your help over the years of research and drafting was invaluable, and your enthusiasm and willingness to engage in environmental information concepts encouraged me to create a more practical, educational book.

And a special thank you to my wonderful CUNY School of Law community. I am honored to work at a law school dedicated to law in the service of human needs, and proud to participate in that mission every day. You fostered my vision and gave me space to share my work, lent your ears to hear-

ing out my ideas, and provided invaluable feedback and support throughout the process. To my fellow library faculty and staff, and to my co-librarians Doug Cox, Raquel Gabriel, Yasmin Sokkar Harker, Jonathan Saxon, and our wonderful director Julie Lim: you are the best. I am lucky to call you my colleagues.

And last but certainly not least, I dedicate this book to my awesome family. Mom and Dad, you support all my ideas, no matter how flighty. Eyal, you are the greatest partner I could ask for. Thanks for your patience as I spent days poring over environmental research and writing, and for offering your help and encouragement every step of the way. Also love and thanks to Ben and Evelyn, who are not old enough to read this yet, but will someday know that their Mom likes to write stuff about environmental law things.

Foreword

It is an honor to provide the foreword to this book. A chance conversation between law librarians passionate about environmental legal research at the sixth annual *Boulder Conference on Legal Information: Scholarship and Teaching* in San Antonio hatched the idea for this book, and I have watched it evolve ever since. The Boulder Conferences offer a yearly opportunity for law librarians to receive feedback and advice on their scholarship from senior reviewers and peers. The author and editor took that chance conversation and turned it into a book proposal, presenting four draft chapters and an outline of a table of contents as a work-in-progress at the seventh annual Boulder Conference in Philadelphia. Two more draft chapters and a revised table of contents were workshopped at the eighth annual Boulder Conference in Chicago. The author framed her work for the conferees, law librarians all, as providing a step beyond traditional legal research. The book you have before you is the result of the hard work Sarah has put into its drafting and Taryn editing, the time for research and writing wrested from the competing demands of day jobs as law librarians and from private life.

The very title of this book acknowledges that, in the regulatory state, those who wish to set environmental agendas, influence policy decisions, take direct political action, seek access to detailed environmental information, or follow traditional litigation strategies against agency actions or inactions need access to more than the traditional legal materials that most research guides provide. This book is for anyone who seeks to participate in local, national, or international environmental conversations. The aim is to collect, in one place and at an accessible level, all of the tools necessary to participate in those conversations. While the book does address traditional legal research in one chapter, the book's overall focus is on obtaining environmental information produced and collected by federal, state, local, and international governments in order to promote environmental decisionmaking.

The book begins with an acknowledgment of the complexity of the task it is seeking to accomplish. Chapter 1 concedes that the breadth of the very concept of environmental information, as that term has been defined, makes the task daunting. Compressing the European Union's definition, set forth in full in Chapter 1, gives some hint of the scope of the information the book discusses:

Environmental information shall mean any information in any form about the state of the elements of the environment, any substances that are released into the environment, any legal measures of any kind that might affect the environment, any reports on the environment, any cost-benefit or economic analyses used in any legal measures affecting the environment, and any information on the state of human health and safety that might be affected by any of these environmental elements.

Each chapter of the book uses a real environmental information-seeking story to set the stage for the ensuing discussion. Chapter 2 gives the reader an overview of the United States' reactionary statutory framework and provides a useful taxonomy of environmental laws: information and planning laws; pollution control laws; resource management laws; chemical tracking laws; and liability laws, discussing the laws with each category.

Chapter 3 presents an overview of the legal research process. First, the stage is set with an environmental information seeker's question about permitting procedures for cement plants and air pollution. After a review of the legal research process, with special attention to the benefits and detriments of both free and paid resources, the chapter applies that process to the cement plant problem. Legal research is complex. This chapter does an excellent job of clarifying the legal research process for non-law researchers. Chapter 4 addresses accessing environmental information related to the U.S. environmental statutory framework, starting with a primer on searching the U.S. Environmental Protection Agency's (EPA's) website, EPA.gov, a notoriously difficult task. The chapter discusses separately and in depth how to access environmental information related to prospective emergency plans and overviews, manifests for hazardous material, pollution reports, and public notice and mandatory labeling for potentially dangerous materials and events. For example, under "Access to Hazardous Materials Tracking Information," the information sources relating to the Resource Conservation and Recovery Act (RCRA) list and explain the *RCRA Biennial Report* and RCRAInfo. Creating the taxonomy and then describing the sources of law for each category and the relevant databases makes it easier to locate the information needed.

Chapters 5 and 6 look at federal transparency laws. Chapter 5 discusses what to do when the material an information-seeker wants to find is not available through an agency's affirmative disclosure of environmental information. A discussion of the Freedom of Information Act (FOIA), its history, its limitations, and the exemptions to disclosure follows. Readers are given a guided tour of the request process, the appeals process, and FOIA resources.

Chapter 6 discusses the other federal transparency laws, including federal meeting laws, laws governing the management of agency information, laws requiring finding aids for researchers, laws restricting access to information, records classification, FERC requests, and the Privacy Act.

Chapter 7, using a 549-page proposed rule by the U.S. Department of Transportation's (DOT's) Pipeline and Hazardous Material Safety Administration as the starting point, takes readers through the rulemaking process. The chapter outlines the entire process, starting with publication of a proposed rule in the *Federal Register*, the procedures for public notice and comment, the final rule, and ending with codification in the *Code of Federal Regulations*, thoroughly discussing the general government and specific agency websites involved at each stage. Most importantly, the chapter discusses the records that are generated before a proposed rule is published and identifies what sources about the pre-rulemaking process are available. And because the regulatory process does not end after a final rule is issued, the chapter also introduces guidance documents as an information resource.

Chapter 8 takes up the important category of grey literature, broadly defined as “not official government records,” and material not published by mainstream publishers. Grey literature relevant to environmental issues includes some surprises. For example, corporations must disclose certain environmental information in their filings with the Securities & Exchange Commission (SEC). This chapter starts by illustrating how to locate such filings and guidance documents. In addition to the SEC, DOT, the U.S. Department of Justice, the Federal Aviation Commission, and the Food and Drug Administration are other agencies identified as having environmental materials. This chapter addresses how to find congressional documents and Congressional Research Service reports. Researching like a reporter and using power search techniques on Google to find this information round out the tools provided.

Chapter 9 takes up the very difficult research task of finding state and local environmental information, which may not be easily available. Where would an environmental information-seeker go, for example, to find out what fluids are in the fracking chemicals used in oil extraction projects in a particular state? Information that must be collected by states can be different than the information collected by the federal government, and can vary based on zoning, land use, building codes, or sanitation laws. States differ in their freedom of information laws, so there is little uniformity in what types of environmental information is available from state to state. In addition, federal law frequently delegates implementation to the states, within certain

guidelines. This is known as cooperative federalism. The chapter also has citations to each state's environmental information access laws.

Chapter 10 introduces the environmental information researcher to foreign and international environmental resources. Environmental issues know no political borders. Foreign law is the domestic law of other countries, and the chapter lists the online resources for locating those laws. There is also a discussion of how to find and use other nation's information access laws. International law, meanwhile, governs the relationships between countries, especially treaties. The chapter has a comprehensive list of sites where treaties and other international environmental documents can be located.

Chapter 11 ties many of these disparate pieces together by discussing how to make sense of scientific environmental information. As does each chapter, Chapter 11 uses a real scenario to illustrate the problem. After discussing resources to help environmental information researchers understand the jargon, the chapter addresses understanding the formats, structures, and functions of environmental testing reports, environmental impact statements, and permit records. The authors recommend using the ADEPT method of analyzing environmental information: Analogy, Diagram, Example, Plain English, and Technical Definition. The final pieces of the chapter discuss how to get help in assessing environmental risk and how to move forward with advocacy.

Finally, two appendices list the major environmental statutes and their amendments and provide contact information for EPA regional offices.

Taken together, the chapters in this book offer traditional legal researchers—as well as anyone else interested in having a say in the conversation about local, national, and international environmental issues—all the tools they need to find and use the information they want within this vast and messy landscape. I predict that this book will become a staple for environmental advocates.

Susan Nevelow Mart
Director of the Law Library and Associate Professor
University of Colorado Boulder School of Law