ENVIRONMENTAL INFORMATION: RESEARCH, ACCESS & ENVIRONMENTAL DECISIONMAKING

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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.

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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