Practical Environmental Law 2nd edition Vietzen Test Bank

SKU: 9780735507807-TEST-BANK

ASPEN COLLEGE SERIES

Instructor's Manual and Test Bank

to accompany

Practical Environmental Law

Second Edition

Laurel A.Vietzen

Wolters Kluwer
Law & Business

Practical Environmental Law 2nd edition Vietzen Test Bank

Copyright © 2013 CCH Incorporated.

Published by Wolters Kluwer Law & Business in New York.

Wolters Kluwer Law & Business serves customers worldwide with CCH, Aspen Publishers, and Kluwer Law International products. (www.wolterskluwerlb.com)

No part of this publication may be reproduced or transmitted in any form
or by any means, electronic or mechanical, including photocopy, recording,
or utilized by any information storage or retrieval system, without written permission
from the publisher. For information about permissions or to request permissions online, visit us at
www.wolterskluwerlb.com, or a written request may be faxed to our permissions department at 212-771-0803.

To contact Customer Service, e-mail customer.service@wolterskluwer.com,
call 1-800-234-1660, fax 1-800-901-9075, or mail correspondence to:

Wolters Kluwer Law & Business
Attn: Order Department
PO Box 990
Frederick, MD 21705

Practical Environmental Law 2nd edition Vietzen Test Bank

TABLE OF CONTENTS

To the Teacher 1

SAMPLE SYLLABUS 3

PART ONE: Implementation of Environmental Law

CHAPTER 1: Introduction to the Study of Law.....7

CHAPTER 2: Administrative Agencies in Environmental Law 15

CHAPTER 3: The Courts in Environmental Law 23

CHAPTER 4: The Constitution and the Executive in Environmental Law.....29

CHAPTER 5: Protection of the Environment at the Local and International Levels.....35

CHAPTER 6: Due Diligence in Transactional Law 41

PART TWO. Statutes

CHAPTER 7: National Environmental Policy Act (NEPA) 47

CHAPTER 8: The Air We Breathe.....51

CHAPTER 9: Water 59

CHAPTER 10: CERCLA, SARA, EPCRA, and TSCA.....67

CHAPTER 11: Solid Waste, Hazardous Waste.....73

CHAPTER 12: Wild Things, Wild Places: ESA, Federal Land, and FIFRA.....81

CHAPTER 13: Mining.....85

TEST BANK.....88

Practical Environmental Law 2nd edition Vietzen Test Bank

Practical Environmental Law 2nd edition Vietzen Test Bank

To the Teacher

This class is heavy on law, leaving little time for exploration of other important matters, such as job opportunities and responsibilities, current events and issues, communications skills, ethics, computer skills, and other subjects important in the work world and in the ABA-approval process. The author has attempted to address that problem by including several homework assignments that require use of CALR, ethics, and exploration of related career opportunities.

To further supplement the book material, the instructor may want to vary the classroom presentation. This manual includes at least one suggestion for each chapter, in addition to discussion of homework and review questions. The instructor may also want to reserve time for "movie night" and show a film concerned with environmental issues. The author particularly recommends *A Civil Action*, which depicts the difficulties in representing environmental plaintiffs.

The instructor may also want to assign a term paper and/or oral presentation. If the project is assigned early enough in the semester, students can be scheduled to give presentations to break up the lecture with interesting material outside the text. At the same time, the assignment can reinforce communications and computer skills. Depending on the set-up of the classroom, the instructor may require students to use technology to show graphics. Use of Powerpoint or the free trial of software for producing court exhibits (www.smartdraw.com) combined with a researched, oral report kills several ABA "birds" with one stone!

Some topics are suggested below, but be aware that students may be able to buy papers on some of these subjects. If you are suspicious, enlist the help of your librarians, use a paid anti-plagiarism site (www.turnitin.com) or simply Google a distinctive phrase or misspellings in the paper.

- Wind energy (is it a "nuisance" or the wave of the future)
- How do our consumer choices impact the environment (e.g., buying cheap cashmere from China)
- Dumping wastes in third world countries
- Native American views on land use contrasted to the statutory scheme
- Environmental policies in competition: forest re-growth vs. bringing back certain species
- An overview of environmental regulation in a specific country
- Level of cooperation among countries in European Union with respect to environmental issues
- Disposal/recycling of electronics
- Impact of global warming on the poorest nations

The organization of the text in 12 chapters suggests coverage of one chapter per week during a typical 15-16 week semester, with two weeks reserved for a mid-term exam (and, possibly, a movie or student presentations) and the final exam. If the calendar permits, the instructor may also want to consider allowing extra time for more difficult chapters dealing with air and water pollution.

Practical Environmental Law 2nd edition Vietzen Test Bank

Sample Syllabus

Instructor Information
Policies on attendance, disabilities, plagiarism, etc.

Class meets Monday nights, 6:30-9:30 pm, as indicated on the schedule below

Grading:

6 written graded assignments, 10 points each		60
6 "check-off" assignments, 5 points each		30
1 homework presentation		20
Term paper		50
Oral presentation on term paper		40
Quizzes	4 @ 25 points each	100
Final exam		100
TOTAL POSSIBLE POINTS		400

Homework:
During the semester you will submit 12 written assignments. Each assignment will be from the chapter that was the subject of the prior week's lecture. On the first night of class you will be assigned to Group A or Group B. At the end of each class period, your instructor will give each group its assignment for the following week. The assignments for the second and third weeks of class are already on the schedule chart. About half of the assignments involve substantive research, summarizing cases, and answering questions, while about half simply require that you find website information. Your instructor will divide the assignments so that each student submits work in both categories.

During the instructor will randomly choose six of your assignments for grading on a 10-point scale. The remaining six assignments will be check-offs; they will not be individually graded—if the assignment is submitted in acceptable form, you will get 5 points.

In addition, during each class the instructor will select one or two students to give homework presentations. During the homework presentation, you will describe how you did the work, any problems you encountered, etc., and answer questions from your classmates. The presentation should not last longer than 2-5 minutes and is worth up to 20 points.

Term Paper:
During the semester you and a classmate will work together to research and write a 5-6 page paper on an environmental topic. By the second week of class, identify your partner and pick a date for your oral presentation. I recommend that you pick teams so that, between the two of you, you have skills in research, writing, and computer presentations. You may pick your own topic, with the consent of the instructor, or you may pick a topic from a list (to be circulated in class) of suggested topics. You will find formatting and citation requirements on the class website.

Practical Environmental Law 2nd edition Vietzen Test Bank

Your oral presentation of your term paper should take about 10 minutes. Each team member is expected to do some part of the oral presentation. The presentation should include some visual elements. You may use the classroom computer/projector to present your graphics and the instructor will assist, if necessary, in operating the equipment.

Schedule:

Date	Class Activities	Assignment
1/14/08	Introductions, class expectations, students assigned to groups. Lecture: Ch. 1, Sources and types of law, legal research, briefing cases. In-class work: Brainstorming (1-1)	.
1/21/08	Pick topics and dates for term paper presentation. Chapter 1 Homework Presentation Lecture: Ch. 2, Administrative agencies	Group A—Find state statute and job search (1-2; 1-3); Group B--case brief (1-4)
1/28/08	Chapter 2 Homework Presentation Lecture: Ch. 3, Courts in Environmental Law	Group A— ADR and FOIA questions (2-4; 2-5); Group B—find state/tribal agency & state APA(2-1; 2-2)
2/4/08	Chapter 3 Homework Presentation First term paper presentation(s) Lecture: Ch. 4,Constitution and Executive QUIZ 1, chapters 1-3	
2/11/08	Chapter 4 Homework Presentation Term paper presentations Lecture: Protection of the Environment at Local and International Levels	
2/18/08	No class—Presidents' Day	
2/25/08	Chapter 5 Homework Presentation Term paper presentations Lecture: Ch. 6, Due Diligence	
3/3/08	Chapter 6 Homework Presentation Term paper presentation(s) Lecture: Ch. 7, NEPA QUIZ 2, chapters 4-6	
3/10/08	Chapter 7 Homework Presentation Term paper presentation(s) Lecture: Ch. 8,Clean Air Act	
3/17/07	Chapter 8 Homework Presentation Term paper presentation(s) Lecture: Continue Ch. 8, CAA	
3/24/08	Spring Break: No class	
3/31/08	Term paper presentation(s) Lecture: Ch. 9,CWA	

Practical Environmental Law 2nd edition Vietzen Test Bank

4/7/08	Chapter 9 Homework Presentations Term paper presentation(s) Lecture: Finish Chapter 9	
4/14/08	Term paper presentation(s) Lecture: Ch. 10 CERCLA, SARA, EPCRA, and TSCA QUIZ 3, chapters 7-9	
4/21/08	Chapter 10 Homework Presentation Term paper presentation(s) Lecture: Ch. 11, Solid Waste, Hazardous Waste	
4/28/08	Chapter 11 Homework Presentation Term paper presentation(s) Lecture: Ch. 12, Endangered Species and FIFRA	
5/5/08	Chapter 12 Homework Presentation Term paper presentation(s) QUIZ 4, chapters 1-3 Movie: A Civil Action (1 hr. 45 min)	
5/12/08	Final term paper presentations, Chapter 12 Homework Presentation Final exam	

Practical Environmental Law 2nd edition Vietzen Test Bank

Practical Environmental Law 2nd edition Vietzen Test Bank

Part One. Implementation of Environmental Law

Chapter 1
INTRODUCTION TO THE STUDY OF LAW

SUGGESTIONS FOR CLASSROOM ACTIVITIES

1. Perhaps the best teaching tip for the whole course is to use the Environmental Law Professors' Blog, http://lawprofessors.typepad.com/environmental_law/, which contains news articles and recent cases for discussion, links to resources concerning particular areas of environmental law, humor, and even video resources.

2. Review enforcement options

	Regulatory	Civil suit	Criminal prosecution
Who would initiate proceedings	Fed, state, or local admin agency	Private individual, class action, business, gov't	Gov't prosecuting authority, e.g., state's atty/district atty
Source of law being enforced	Agency rules and regs	Statute or common law	criminal statute
Possible consequences	Fines, loss of license, etc.	Legal remedy= Award of damages ($) or Equitable remedy = court order	Jail, probation (discuss range of criminal penalties)
Other		Availability of insurance, possibility of strict liability and vicarious liability	Discuss element of intent required in criminal prosecutions

3. Discuss statutory construction
Ask students to "take sides" and discuss whether a horse, a skateboard, a wheelchair, a shopping cart, a baby stroller, or an inflatable kayak should be considered a "vehicle" for purposes of DUI statutes. Visit www.azduiatty.com/dui-on-a-horse.htm for some citations and arguments.
Another fact situation likely to stimulate energetic discussion: Paul and Beth, 20-year-old students at State U, have been dating for 18 months. On a Friday night in fall Paul drives Beth to the campus of Neighboring State U, a two-hour drive. They stay at a motel on Friday night in order to attend a Saturday football game between State and Neighboring State. On Friday night, Beth's dad tried to get in touch with her because of a family emergency. Dad became enraged to learn that Beth was away from campus, at a motel, with Paul, and persuaded his golf buddy (who happens to be an FBI agent) to arrest Paul for violation of the Mann Act, which criminalizes transport of a woman across state lines for an immoral purpose. Many students will become upset because Beth was more than 18 years of age and went willingly. This provides a good opportunity for an exercise in critical thinking, because the law does not refer to age or the woman's willingness. For a historical perspective, visit
http://www.pbs.org/weta/unforgivableblackness/knockout/mann.html

REVIEW ASSIGNMENTS

Practical Environmental Law 2nd edition Vietzen Test Bank

Assignment 1-1: Brainstorming Fact Scenarios

The most common error in this assignment are using terms far too narrow, for example, using "Riverside City" because it fits into the WHERE category, rather than thinking broadly and categorizing this as "waterfront" or "river." Other students might think very broadly and use the word "pollution" from the WHAT or WHY or HOW categories; the instructor should point out that the term will only be useful if it is appropriately narrowed by connection with other terms in the query.

The instructor may want to choose some of the better student work (and some of the weaker efforts) and make transparencies for class discussion. This will help students realize that there is no one "right" answer and get over their anxiety in formulating queries. The instructor may also want to use CALR in the classroom to demonstrate results found with some of the queries.

Brainstorm the following problems and write a CALR search query for each. Remember, you are not trying to find an answer to the problem at this point, but are only practicing formulating queries.

- Jim just signed a five-year lease on a building on the river in Riverside City to operate a pizza restaurant. He plans a large deck overlooking the river, for outdoor dining. He has already begun installing equipment and furniture. Last night the city council approved a permit for a paper mill (Merritt Paper Products) that will operate across the river, upstream about ¼ mile, in an area zoned for industrial uses. Although the mill will use state-of-the-art technology to prevent air and water pollution, it will emit odors that could be upsetting to diners. Jim wonders whether he has any rights.

The query for this scenario should focus on the fact that Jim's business is a neighbor or adjacent to what appears to be a lawful, permitted use; the odors could result in private nuisance. Students are likely unfamiliar with the concept of nuisance, but the author's search of "neighbor! /p odor /p lawful" in the database of federal district courts led to nuisance cases.

- Merritt Paper Products began operations in Riverside last year, in compliance with all federal, state, and local laws concerning air quality. Last month, an unusual weather situation brought strong winds out of the east. Prevailing winds are from the west and Riverside rarely experiences strong winds. As a result, the odors from Merritt were carried more than a mile. A child, on the playground at an elementary school about a mile away, experienced a severe asthma attack as a result of inhaling the odors. Emergency workers were delayed in reaching the scene because a tree had fallen across an access road. The child suffered brain damage. Merritt wonders whether it has any liability.

Some students will react emotionally to the problem and focus on the child's brain damage, a concept too narrow for an effective query. Students may not be familiar with tort law concepts underlying this problem, but will probably come up with some combination of "unforeseeable, weather, intervening cause, preexisting condition" in addition to "liability, odors or pollution, and health or asthma." In fact, they will come up with far too many terms. From this exercise, students can learn to keep broadening the query until they find something.

Practical Environmental Law 2nd edition Vietzen Test Bank

A search, in a database of all states and feds, using "asthma /p liab! /pollut!" only resulted in one marginally relevant case!

> Insurer claimed insured had not caused employee's alleged illness, that the trial court erred in failing to assign fault to all tortfeasors, and that employee was contributorily negligent in aggravating her asthma. The appellate court found that the evidence did not support a finding that negligence on her part caused her illness. Although a percentage of fault could have been attributed to other potential tortfeasors, the trial court did not err in concluding that the contractor should be held liable for 100 percent of the damages. The trial court considered potential fault of the building owners and other possible tortfeasors, but concluded that the contractor's negligence had more likely caused the damages. State Farm Fire & Cas. Co. v. M.L.T. Constr. Co., 849 So.2d 762 (La. App. 2003)

- Linda purchased her first home about 18 months ago; a cute brick bungalow previously owned by a nurse, who died last year. Linda bought the house from the nurse's estate. The house was the nurse's only asset and the proceeds from the sale have already been used to pay off the nurse's mortgage, final medical expenses, funeral costs, etc. Last month, when Linda was finally able to afford some landscaping, she discovered that the yard is full of buried medical waste, including syringes, x-ray film, and other dangerous items. Apparently the nurse was responsible for disposing of her employer's (a doctor's office) medical waste and, instead of paying for disposal by a service, simply brought the material home and buried it in his yard. The estimated cost of removing the material, cleaning the yard, and restoring landscaping is close to one million dollars. Linda wonders whether she is liable for the cost.

This may be familiar to the instructor because it has been used as a law school exam question! The author cannot find any case on point.

Assignment 1-2: Find Your State Statutes

Find your state's environmental statutes online and bookmark the site on your computer.

Assignment 1-3: Job Search

Find an online posting for a job in the private sector or in state government that requires knowledge of environmental law.

Assignment 1-4: Case Brief

Make a timeline showing the chronology: the discovery of contamination, the first suit, the subsequent "Underlying Cases," the settlement, the attempt to obtain compensation from the insurance companies, etc..

Students will be surprised how much factual information can be eliminated in editing this case down to "bare bones." Even reference to the first case, against Cumberland, is not essential.

Practical Environmental Law 2nd edition Vietzen Test Bank

Keeping the parties straight is a challenge with this case. Consider the following discussion questions:

a. Traveler's is seeking the privileged material from its own client (Shield is the insured, but has assigned its claims under the policy to the District). Why? What might the insurers hope to find in the reports and memo?

The insurer hopes to find information that will advance its argument that it is not liable on the claim. Perhaps the policies did not cover certain operations or procedures; perhaps there were notification requirements with which Shield did not comply.

b. Suppose that Shield had become concerned about contamination before there was any litigation or any threat of litigation and, in an effort to be a "good citizen," had hired Rizzo to assess the situation. Would internal communications among Shield employees and communications between Shield and Rizzo have been protected in subsequent litigation?

The answer is not clear-cut! Some states have environmental audit privileges, discussed in a later chapter.

c. The court states that the insurance company can take depositions of Shield employees in an attempt to obtain the desired information without access to the privileged documents. Do those employees have to answer questions relating to pollution caused by their employer? Can they "take the Fifth?"

Students must remember that this is not a criminal prosecution and the right to remain silent does not apply. In any case, there is no indication that the employees are defendants.

Dedham-Westwood Water Dist. v. Nat'l Union Fire Ins. Co.
Pittsburgh
11 Mass. L. Rep. 211 February 15, 2000

Facts and Procedural History: The District sued Shield for contamination of wells. The Massachusetts Department of Environmental Protection ordered Shield to conduct environmental site assessments and remedial actions. Shield hired outside counsel and environmental consultants to defend the litigation. None of Shield's insurance carriers was willing to assume the full defense. Shield and the District filed a Consent Judgment, under which Shield assigned to District its rights in insurance coverage for the claims. The District filed this case against insurance companies in connection with the clean-up. Insurance company moved to compel Shield to produce for inspection an investigative report, and memo memorializing interviews with Shield employees. Shield asserts that the documents are not discoverable because they are subject to attorney-client privilege and the work product doctrine. The motion was denied.

Issue: Is a document prepared before litigation began subject to discovery?

Practical Environmental Law 2nd edition Vietzen Test Bank

Holding and Reasoning: The document is not discoverable because it is "work product" prepared "in anticipation of litigation . . . by or for another party or by or for that party's representative." It is not necessary that litigation be pending at the time the document is created; it is irrelevant that it was not until two years after the decision that the District sued Shield. Shield was aware of an investigation that focused on Shield and that it might be forced to sue its insurance companies to obtain defense and indemnification.

Issue: Is a document shared with non-lawyers subject to discovery?

Holding and Reasoning: The reports are also shielded from discovery by attorney-client privilege, which attaches to communication between an attorney and client in confidence, for the purpose of seeking, obtaining or providing legal advice or assistance. Changes to the first report were made by the attorney for the benefit of environmental consultants and litigation consultants in anticipated litigation. Disclosure does not waive work product privilege because the consultants were specifically retained and documents created for litigation.

The report memorializing employees interviews constituted factual discussions relating to Shield's operations and is also protected from production under the work product doctrine. The notes reflect the attorney's mental impressions, thought processes and opinions in anticipation of litigation.

Practical Environmental Law 2nd edition Vietzen Test Bank

CHAPTER REVIEW QUESTIONS:

1. Identify the five sources of environmental law.
   Constitution
   Legislation
   Judicial Decisions
   Administrative Rules and Regs
   Executive Order

2. Is environmental law found in local law, state law, or federal law?
   All three!

3. Identify three differences between a civil lawsuit and a criminal prosecution.
   Types of outcomes: sentence for guilty defendant vs. damages or equitable relief for liability.
   Prosecution/Plaintiff and burden of proof
   Constitutional and procedural rights: 5th Amendment "right to remain silent," "Miranda warnings," etc.

4. While researching a legal question, you are lucky enough to find an article written by a prominent Harvard professor. The article discusses your precise issue in depth. Is the article primary authority or is it secondary authority?
   Secondary

5. When you find a statute that addresses your issue, you still might have to look for case law. Why?
   For interpretation of terms and examples of application of the law.

6. Identify three types of connectors that can be used in a terms and connectors search and describe the functions of wildcards and root expanders.
   Proximity: &, /s, /p, /#
   Elimination: %
   To Find Synonyms: or

7. Page numbers are not used in referring to a particular part of a statute. Why?
   Topics can expand or contract. Using references to titles, chapters, acts, sections, or paragraphs eliminates the need to change all references when a law is amended or repealed.

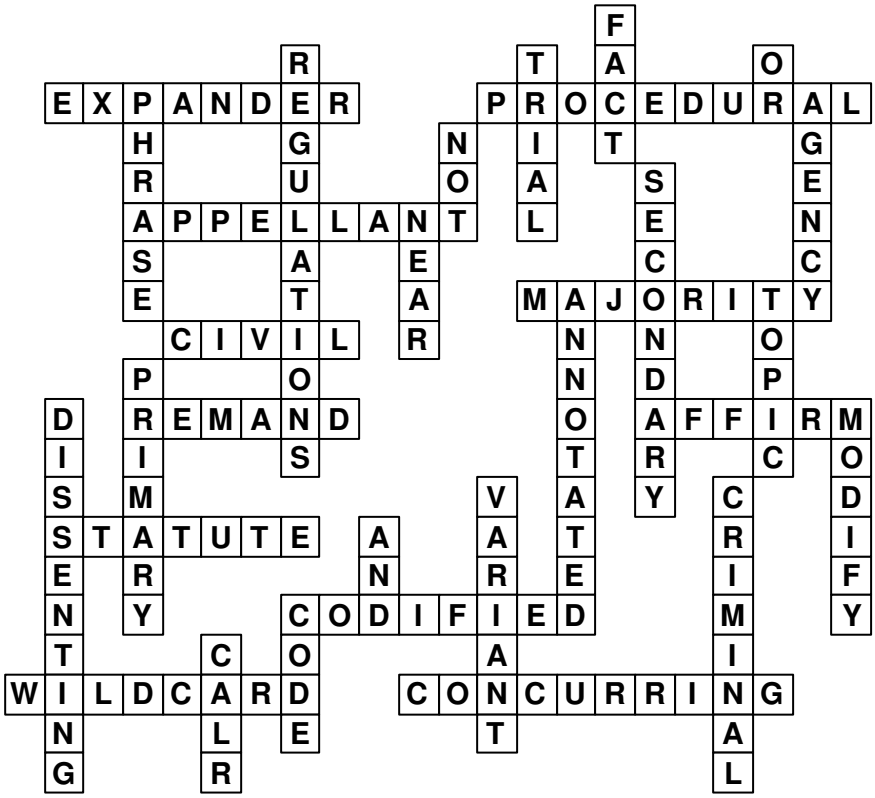
8. The relevant statute describes "DUI" as being in control of a "vehicle" while intoxicated. Your client was arrested for riding a horse while intoxicated. Describe strategies you would use to determine whether the horse should be considered a "vehicle."
   If the statute does not include definitions, use annotated statutes or CALR to determine how courts have interpreted the term.

Practical Environmental Law 2nd edition Vietzen Test Bank

9. Your DUI client is also claiming that he was not intoxicated while riding the horse, but was suffering a reaction to a prescription drug. What type of issue does this present and would legal research be appropriate?

   The issue is initially a fact question: was the client in fact suffering a reaction and did the client have knowledge of the possibility of such a reaction. Once that issue is resolved, legal research is appropriate to determine whether this is a viable defense.

Crossword Puzzle



Practical Environmental Law 2nd edition Vietzen Test Bank

Practical Environmental Law 2nd edition Vietzen Test Bank

Chapter 2
ADMINISTRATIVE AGENCIES IN ENVIRONMENTAL LAW

SUGGESTIONS FOR CLASSROOM ACTIVITIES

1. The Law Professor Blog Network http://lawprofessors.typepad.com/adminlaw/ has a wonderful administrative law site—it even contains admin law humor (hard to imagine, but true), such as

> This column from the Washington Post describes the YouTube video campaign by anti-regulatory activists over a new regulation by the Dept. of Energy - the reg apparently makes affordable washing machines (under $900) too wimpy to get clothes clean. In protest, the video encourages viewers to send their dirty underwear to the Undersecretary of Energy (just to make a statement; there is no promise that the Undersecretary is going to clean them for you) …
>
> The article concludes by saying that the office of "Undersecretary" Dennis R. Spurgeon has not yet received any underwear. I'm a little confused about whether he is the right recipient. This agency org chart does portray Spurgeon as the Undersecretary of Energy and puts the "Assistant Secretary for Energy Efficiency" beneath him. But his main govt. bio page dubs him the "Assistant Secretary for Nuclear Energy," which presumably has little to do with consumer laundry machines.

great teaching tips, news about recent cases, and links to thought-provoking articles such as

> This editorial from the Wall Street Journal nicely summarizes some of the current litigation by environmental groups against government agencies, particularly in areas affecting energy production.

2. To discuss the use of ADR in environmental justice disputes, visit the U.S. Commission on Civil Rights site http://www.usccr.gov/pubs/envjust/ch5.htm

3. Cornell has an excellent website concerning administrative law:
http://www.law.cornell.edu/wex/index.php/Administrative_law

4. Show students the federal APA, the historic Attorney General's Guide to administrative law, or a list of federal agencies,
http://biotech.law.lsu.edu/Courses/study_aids/adlaw/
http://www.law.fsu.edu/library/admin/1947cover.html
http://www.washlaw.edu/doclaw/executive5m.html

Practical Environmental Law 2nd edition Vietzen Test Bank

REVIEW ASSIGNMENTS

Assignment 2-1: Find State and Local Agencies

Visit www.epa.gov/epahome/state.htm and bookmark your state environmental agencies for use in future assignments. If your county or city has a website, determine whether you have local agencies

Assignment 2-2: Find the Administrative Procedures Act for your state.

Helpful websites: http://www.nass.org/acr/html/internet.html;
http://www.abanet.org/adminlaw/apa/home.html

Assignments 2-3: Research CFR and Federal Register

1. Find an EPA regulation that opened for public comment this week.
   http://www.regulations.gov/fdmspublic/component/main
2. Is it possible to submit an electronic comment to an EPA regulation?

Yes. http://www.regulations.gov/fdmspublic/component/main

3.Do an Internet search for notices of recent proposed environmental regulations in your state, e.g., [Ohio 2013 notice proposed environmental]; describe how the public can comment on the proposal. While on your state agency website, determine whether it is possible to subscribe to e-mail notices of proposed regulations.

Assignment 2-4: Find State Hearing Rules

Using the site you previously bookmarked or an internet search for "environmental hearing" and the name of your state, find the procedures or rules for environmental hearings in your state. If your state agency website includes a search box, enter the term "ADR" or "arbitration" or "mediation" to determine whether your state employs alternate conflict resolution techniques. Using the information you find and/or information found on the EPA website, list three reasons why a situation might NOT be appropriate for ADR, so that the more formal hearing process will be necessary to resolve the dispute.

> ADRA sect. 572
> (b) An agency shall consider not using a dispute resolution proceeding if--
> (1) a definitive or authoritative resolution of the matter is required for precedential value, and
> such a proceeding is not likely to be accepted generally as an authoritative precedent;
> (2) the matter involves or may bear upon significant questions of Government policy that require
> additional procedures before a final resolution may be made, and such a proceeding would not
> likely serve to develop a recommended policy for the agency;

Practical Environmental Law 2nd edition Vietzen Test Bank

(3) maintaining established policies is of special importance, so that variations among individual
decisions are not increased and such a proceeding would not likely reach consistent results among
individual decisions;
(4) the matter significantly affects persons or organizations who are not parties to the proceeding;
(5) a full public record of the proceeding is important, and a dispute resolution proceeding cannot
provide such a record; and
(6) the agency must maintain continuing jurisdiction over the matter with authority to alter the
disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement.

Does ADRA permit ADR hearings by telephone? Yes, sect. 579

Assignments 2-5: Answer Questions Concerning FOIA Requests
Find the EPA FOIA request form online and answer the following:

The request must be submitted to a particular office. How are EPA offices organized?
By 10 regions

Identify the "nine exceptions" that define documents that may be withheld from disclosure under FOIA.

From EPA FOIA Manual:
a. Exemption 1 National Defense/Foreign Policy .....
b. Exemption 2 Internal Agency Rules.
c. Exemption 3 Information Exempt under Other Statutes
d. Exemption 4 Trade Secrets/Commercial Financial Information
e. Exemption 5 Inter- and Intra-Agency Memoranda .....
f. Exemption 6 Personal Privacy ....
g. Exemption 7 Records Compiled for Law Enforcement Purposes
h. Exemption 8 Records of Financial Institutions .....
i. Exemption 9 Geological/GeophysicalInformation .....

Under what circumstances may the EPA request prepayment for a FOIA request?
Locate your state's open meetings statute
EPA FOIA Manual: history of non-payment or fee anticipated to exceed $250 and requestor has no history of payment

Practical Environmental Law 2nd edition Vietzen Test Bank

Case and Assignment 2-6

1. Why not treat it as a contested case? Could the agency have avoided all of this by following contested case procedures to begin with?
The class should note how expensive and time-consuming it would be to allow everyone in the area to conduct discovery, cross-examine witnesses, etc. and that the process could prevent issuance of controversial permits. The instructor may want to introduce the concept of NIMBY—not in my backyard—and environmental justice: should these uses end up only in areas where the residents are undereducated and unable to afford to fight legal battles?

2. The court asserts, repeatedly, that the issuance of the permit does not affect a specific party more than others, but is that really accurate? Wouldn't the Army be uniquely affected by the issuance or denial of the permit? Your local building administrator would not normally hold a public hearing before issuing a permit to allow you to remodel your basement, so why, in this case, did issuance of an individual permit require formal rule-making, with notice, comments, and a hearing?
This particular type of permit, because its issuance is likely to be controversial, is governed by a specific statute that governs procedures. The agency may deal with less controversial permits differently, perhaps with no public input and a contested case hearing available only to the applicant. This is why it is essential to look at specific statutes agency rules for the matter at issue.

3. What is true of the nature of the agency decision that makes it particularly likely that the court will defer and uphold the issuance of permits?
The underlying decision, that the incinerator will not harm public health, safety, or the environment, is based on technical information. The judge likely will not have a science background adequate to understand that data and, in any case, is bound by the standard of review: was there evidence such that a reasonable decision-maker could decide to issue permits. The judge is not allowed to substitute his own opinion for that of the agency, if the agency can justify its decision in the record.

CHAPTER REVIEW QUESTIONS

1. What is the relationship between the three branches of government and administrative agencies?

The legislative, executive, and judicial branches can create administrative agencies and delegate authority to those agencies.

Practical Environmental Law 2nd edition Vietzen Test Bank