Environmental law is a formidable tangle of long, complicated statutes and sometimes arcane judicial doctrines. But underneath all that, I'd like to suggest, there's a very simple structure, rooted in legal basics.

The procedural and structural framework for environmental law is provided by administrative law, supplemented in a few areas like Superfund by ordinary civil litigation. That's why I've heard it said that environmental law is just a branch of administrative law. That's true in exactly the sense that tax law is also a branch of administrative law(every single case involves the IRS!) or antitrust law is a branch of civil procedure (given the private litigation is the main context for antitrust law).

There are two branches of environmental law –sometimes called green and brown. The green part is the concerned with protecting nature — wilderness areas, national parks, endangered species, and so forth. Property law provides the template for this part of the law. The reason is simple: we are generally concerned with the rights of human beings in terms of control of things, and that's the domain of property law. Much of the green part of environmental law in fact is framed in terms of public property. Other aspects involve limitations on private property in favor of the public interest, another more general theme of property law. This doesn't mean that all of the doctrines that 1Ls learn in property class are relevant to constitutional law. But the basic concepts are very important.

The brown side of environmental law is about pollution. This branch of environmental law has acquired some property-connections due to the advent of tradable pollution rights. But basically, pollution law finds its model in Tort law. It does so most directly in the somewhat murky law of nuisance, as Bill Rogers pointed out long ago. It also has affinities with negligence law to the extent that the law presses polluters to take reasonable steps to reduce pollution levels. In fact, the Learned Hand test for negligence is the template for cost-benefit analysis. In a few place, pollution law resembles traditional strict liability for abnormally dangerous activities in its treatment of liability for hazardous waste clean-ups and nuclear releases. What gives pollution law this tort-like character is that the risks from pollution are widely dispersed and typically involve strangers, like much of tort law. For that reasons, much of the conceptual framework of tort law carries over. Again, this isn't so much a matter of specific doctrine as of the underlying concepts.

It's not surprising that many environmental law professors also teach Contracts or Property as a first-year course, while others teach Administrative Law. But there is deeper significance in these linkages. The fact that the basic concepts of environmental law are rooted in the familiar fields of torts and property owners goes a long way to explaining why, in principle, environmental regulation is consistent with the our society's attachment to

property rights and individual liberty. Of course, as in these common law fields themselves, definitions of property rights and of responsibility for harm to others are not sharply defined and evolve over time. Those boundaries will often be contested, whether in the common law or in the context of regulation. But that is nothing new — as we look back over the history of property and torts, we see a continuing process of contested boundaries and evolving understandings.