

Syracuse University  
**COLLEGE OF LAW**

**David M. Driesen**  
University Professor

**Selected Publications**

Syracuse University College of Law  
Selected Publications – David M. Driesen

**Books and Monographs:**

[ENVIRONMENTAL LAW: A CONCEPTUAL AND PRAGMATIC APPROACH](#) (with ROBERT W. ADLER & KIRSTEN H. ENGEL) (3d ed. 2016).

[THE ECONOMIC DYNAMICS OF LAW](#) (2012).

[ENVIRONMENTAL LAW: A CONCEPTUAL AND PRAGMATIC APPROACH](#) (with ROBERT W. ADLER & KIRSTEN H. ENGEL) (2d ed. 2011).

[ECONOMIC THOUGHT AND U.S. CLIMATE CHANGE POLICY](#) (David M. Driesen, ed. 2010).

[BEYOND ENVIRONMENTAL LAW: POLICY PROPOSALS FOR A BETTER FUTURE](#) (David M. Driesen & Alyson C. Flournoy eds. 2010).

[ENVIRONMENTAL LAW: A CONCEPTUAL AND PRAGMATIC APPROACH](#) (with ROBERT W. ADLER) (2007).

[THE ECONOMIC DYNAMICS OF ENVIRONMENTAL LAW](#) (2003).

**Chapters in Books:**

*Traditional Regulation's Role In Greenhouse Gas Abatement*, in CLIMATE CHANGE LAW (Daniel Farber & Marjan Peeters eds. 2016).

*Decisions about Emissions Trading Design*, in DECISION MAKING IN ENVIRONMENTAL LAW (Lee Paddock, Robert Glicksman, & Nicholas Byner eds. Edward Elgar 2016)

*Alternatives to Regulation?: Market Mechanisms and the Environment*, in THE OXFORD HANDBOOK ON REGULATION (Robert Baldwin, Martin Cave, and Martin Lodge eds. Oxford University Press 2010).

*Renewable Energy Under the Kyoto Protocol: The Case for Mixing Instruments*, in A GLOBALLY INTEGRATED CLIMATE POLICY FOR CANADA (Steven Bernstein et al. eds. University of Toronto Press 2008).

[\*Air Quality: The Need to Replace Basic Technologies with Cleaner Alternatives\*](#), in AGENDA FOR A SUSTAINABLE AMERICA (John Dernbach ed. 2009).

**Articles:**

[\*The Means and Ends of Pollution Control Law: Toward a Positive Theory of Environmental Law\*](#), 2017 Utah Law Review 57 (2017).

[\*The Economic/Noneconomic Activity Distinction Under the Commerce Clause\*](#), 67 Case Western Reserve L. Rev. 337 (2016).

[\*Must the States Discriminate Against their Own Producers under the Dormant Commerce Clause?\*](#) 54

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HOUSTON L. REV. 1 (2016)

[\*Legal Theory Lessons from the Financial Crisis\*](#), 40 J. CORP. L. 55 (2014).

[\*Putting a Price on Carbon: The Metaphor\*](#), 44 ENVTL. L. 695 (2014).

[\*The Limits of Pricing Carbon\*](#), 4 CLIMATE L. 107 (2014).

[\*Cost-Benefit Analysis and the Precautionary Principle: Can They Be Reconciled?\*](#), 2013 MICH. ST. L. REV. 771.

[\*Cap Without Trade: A Proposal for Resolving the Emissions Trading Problem Under CAA §111\*](#), 43 ENVTL. L. REP. 10555 (2013). ©2013 Environmental Law Reporter®. Reprinted with permission from ELR.

[\*Purposeless Construction\*](#), 48 WAKE FOREST L. REV. 97 (2013).

[\*Climate Disruption: An Economic Dynamic Approach\*](#), 42 ENVTL. L. REP. 10639 (2012).

[\*Contract Law's Inefficiency\*](#), 6 VA. L. & BUS. REV. 301 (2011).

[\*Two Cheers for Feasible Regulation: A Modest Response to Masur and Posner\*](#), 35 HARV. ENVTL. L. REV. 313 (2011).

[\*An Environmental Competition Statute\*](#), 2 SAN DIEGO J. CLIMATE & ENERGY L. 199 (2010).

[\*Capping Carbon\*](#), 40 ENVTL. L. 1 (2010).

[\*Meaningful Technology Transfer for Climate Disruption\*](#), 64 J. INT'L AFF. 1 (2010).

[\*Toward a Duty-Based Theory of Executive Power\*](#), 78 FORDHAM L. REV. 71 (2009).

[\*Linkage and Multilevel Governance\*](#), 19 DUKE J. COMP. & INT'L L. 389 (2009).

[\*The Missing Instrument: Dirty Input Limits\*](#) (with Amy Sinden), 33 HARV. ENVTL. L. REV. 65 (2009).

[\*Firing U.S. Attorneys: An Essay\*](#), 60 ADMIN. L. REV. 707 (2008).

[\*Sustainable Development and Market Liberalism's Shotgun Wedding: Emissions Trading Under the Kyoto Protocol\*](#), 83 IND. L.J. 21 (2008).

[\*Regulatory Reform: The New Lochnerism?\*](#), 36 ENVTL L. 603 (2006).

[\*Is Cost-Benefit Analysis Neutral?\*](#), 77 U. COLO. L. REV. 335 (2006).

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[\*The Functions of Transaction Costs: Rethinking Transaction Cost Minimization in a World of Friction\*](#) (with Shubha Ghosh), 47 ARIZ. L. REV. 61 (2005).

[\*Distributing the Costs of Environmental, Health, and Safety Protection: The Feasibility Principle, Cost-Benefit Analysis, and Regulatory Reform\*](#), 32 B.C. ENVTL. AFF. L. REV. 1 (2005).

[\*Standing for Nothing: The Paradox of Demanding a Concrete Context for Formalist Adjudication\*](#), 89 CORNELL L. REV. 808 (2004).

[\*Does Emissions Trading Encourage Innovation?\*](#), 33 ENVTL. L. REP. (Envtl. L. Inst.) 10094 (2003).

[\*Loose Canons: Statutory Construction and the “New” Nondelegation Doctrine\*](#), 64 U. PITT. L. REV. 1 (2002).

[\*What is Free Trade?: The Real Issue Lurking Behind the Trade and Environment Debate\*](#), 41 VA. J. INT’L L. 279 (2001).

[\*Getting Our Priorities Straight: One Strand of the Regulatory Reform Debate\*](#), 31 ENVTL L. REP. 10003 (2001).

[\*Choosing Environmental Instruments in a Transnational Legal Context\*](#), 27 ECOLOGY L.Q. 1 (2000).

[\*Free Lunch or Cheap Fix? : The Emissions Trading Idea and the Climate Change Convention\*](#), 26 B.C. ENVTL. AFF. L. REV. 1 (1998).

*The Societal Cost of Environmental Regulation: Beyond Administrative Cost-Benefit Analysis*, 24 ECOLOGY L. Q. 545 (1997).