Should you enter the field of administrative law from a practice specializing in environmental law?

My own legal career began in the early 1970s with the U.S. Environmental Protection Agency (EPA). At that time, the field of environmental law included not much more than several small-sized statutes and the common law of nuisance and trespass. The courts had yet to tackle review of the decisions of the EPA and other agencies and the complexities, both procedural and substantive, that ultimately came to typify most environmental lawmaking and litigation at the state and federal levels. Since that time, the statutes, regulations, and agency guidance issued by EPA and the Departments of Interior, Agriculture, and Energy, along with the Council on Environmental Quality and the Army Corps of Engineers (to name only a few of the administrative agencies implicated in the elaboration of environmental law) have grown into hundreds of
thousands of pages. The cases have also mushroomed, producing a huge body of law, though one that only scratches the surface of issues presented to the environmental practitioner. Some of the “big” issues of statutory meaning and the validity of agency regulations may have been resolved, but the nitty-gritty issues of statutory and regulatory interpretation that arise daily in environmental practice are rarely addressed by the courts.

The environmental practitioner of today is, in most instances, an administrative lawyer first and foremost. As a daily routine, he participates in

- agency rulemakings that impart content to the complex, but often unclear, language of environmental statutes;
- agency adjudications to impose civil penalties, cease and desist orders, or other sanctions or prohibitions;
- proceedings for judicial review of those rulemaking and adjudicatory processes; and
- citizen suits to enforce the law where the federal or state agency in charge has failed to act

among many other types of proceedings that require intimate knowledge of the regulatory process and the procedures that control and shape it.

You can begin your career as a lawyer in the environmental area in any number of ways: as a member of the legal staff of a federal, state, or local agency, with a nongovernmental organization (NGO) as a researcher or its attorney (e.g., Earth Justice, the Sierra Club, or the Environmental Law Institute), in an international organization like the United Nations, or as an associate in a law firm or with a corporate legal department (this list does not necessarily exhaust the possibilities for employment). Some federal agencies have regional offices (EPA does), so if you are not interested in Washington, D.C., as a professional home, you don’t have to start there even if federal agency practice attracts you. Also on the state level, the typical statewide environmental agency has local or regional offices outside the state capital. As a general rule, the central office of an agency focuses on policy decisions and adopts the agency’s regulations, while the regional or local office engages more in the day-to-day practice of communicating that policy and the meaning of those regulations to local entities, working with them to comply, and, if appropriate, commencing and handling enforcement actions.
Once your career begins, it can take any number of paths, both geographically and in terms of who your employer is. Often lawyers start with an agency or an NGO because of the important responsibilities they give even new lawyers on staff; they may later move on to work in the private sector with a law firm or company. On the other hand, it is not infrequent for an attorney in private practice to tire of the routine of dealing with numerous different clients and move into public practice with an agency or an NGO. Private attorneys who have practiced with distinction over the years (and even some who have not) can also be chosen for important appointive policy-making positions in federal and state environmental agencies. The “revolving door” operates at both the state and federal levels of government, with some attorneys moving back and forth between government jobs and private practice several times over a career.

The precise nature of the work involved, whether you are employed in the public or private sector, can vary tremendously and from day to day, for example: litigating an agency or citizen enforcement action in court or before an agency; negotiating the terms of a federal or state-issued water or air pollution control permit; filing comments on proposed agency rules; lobbying federal or state legislatures on pending bills or meeting with regulators to advocate changes in agency rules or the adoption of new rules; advising and drafting with regard to various business transactions, such as the purchase of property that may be contaminated by toxic waste or selling excess emission allowances in one of the many rapidly developing markets (domestic and international) designed to protect the environment for the lowest economic cost; and explaining to a client how its business may be affected by recently adopted legislation or agency regulations, to name only a very few of the multitude of challenging opportunities where you can employ your legal and other skills. Some of these efforts may focus on federal, state, or local law—or a combination thereof—but increasingly the law of other countries (e.g., the European Union) or international law is crucial to private and public sector practice. Globalization and environmental law are inextricably related.

Look for more income in private and corporate practice. Working for an NGO or for a federal, state, or local agency will inevitably pay less, though princely sums are not needed to entice attorneys to apply to them for employment given the job satisfaction that is commonly experienced.
In terms of navigating the typical law school curriculum in search of the optimal package of courses to prepare yourself for a career in environmental law, obviously a basic environmental law course and an administrative law course are essential, and so is a course in international environmental law (even for someone interested in purely domestic practice). If the school offers a course dealing with the legislative process and statutory interpretation, that is equally essential—you will spend most of your career dealing with the work product of legislatures, so you better know how they work and how courts treat statutes in litigated cases. Knowledge of basic corporate law is also important for a variety of reasons, and the law of nonprofit entities is increasingly relevant, particularly if you work for an NGO. (Just one example: there are significant federal tax limits on legislative lobbying by charitable organizations and an attorney for an environmental advocacy organization that is tax-exempt had better know them.) Courses in land-use planning, insurance, and civil litigation can also be crucial in environmental practice. Many environmental problems are the result of bad land-use plans (e.g., allowing development that destroys critical forestland necessary to maintain good water quality). The scope of insurance coverage for the cleanup costs of groundwater pollution caused by hazardous waste disposal is a much-litigated issue. Any student who wants to appear in court to litigate environmental cases for NGOs, private entities, or federal, state, or local governments (on the federal level, it is the DOJ that handles all such litigation with very few exceptions) has to have much more than the elemental knowledge of civil procedure gleaned from the typical first-year course on that topic.

Many schools offer environmental clinics and externships, and no student serious about environmental practice should graduate without one or the other on his résumé. Finally, environmental law is, by its nature, interdisciplinary. For example, if you litigate forest cases for a public interest group, you will have to know something about conservation biology (among other topics). Accordingly, you must acclimate yourself during law school to dealing with issues of science and economics. Taking a pure science course relevant to pollution control or natural resource protection and an environmental economics course is a great idea—no matter how intimidating they can seem at first to the typical law student who shied away from quantitative courses in college. (The ABA allows for up to six credit hours of non-law work
during a student’s three years at law school.) If you are timid about dealing with nonlegal materials in a classroom setting, just imagine yourself confronting the same material for the first time when your client’s business or even more important interests are at stake! In this regard, students interested in an environmental career should give some consideration to getting an advanced non-law degree that exposes them in depth to issues of policymaking and economics, along with the intersection of science and policy.

Whatever courses you have taken and whatever other training you have, however, you should realize that most environmental practitioners ultimately specialize in one or only a few substantive areas of environmental law (e.g., air and water pollution, natural resources protection, etc.). That is true because of the detailed body of rules that has developed in each of these areas and the impossibility of one person’s offering competent advice and representation with regard to all of them. However, despite the differences among the substantive bodies of environmental law, the principles of administrative law—both state and federal—have a core set of common principles and, often, implementing procedures. That’s why administrative law is so important an element of your legal education in light of the crucial relationship in the practice of administrative law to the development and implementation of environmental law.

Like most other employers, those seeking to hire someone into an environmental practice, either public or private, will clearly favor an individual who has shown commitment to, and experience in, the area both during and even after law school. Environmental law is not for everyone, and employers know that: it requires intense detail work in reading statutes and regulations (among other things), and a willingness to confront nonlegal materials. Moreover, environmental law is constantly changing, requiring significant effort to keep up to date, more so than in some other areas of practice. A job applicant seeking an environmental job without training in the area is unlikely to fare well; he presents a real risk to the employer of discouragement and dropping out and into another area of practice. Aside from taking the right courses, work during the summer as an intern at an agency or an NGO or as a summer associate at a law firm or on a company’s legal staff dealing with some area of environmental law can be crucial in distinguishing yourself from others. Some public agencies may favor those applicants who have already demonstrated a commitment to public interest work.
The legal staffs of federal, state, and local agencies doing environmental work are filled with persons who have devoted their careers to government service, and they like to hire persons who have shown the same type of commitment not only in their choice of courses, but, more importantly, in how they have devoted their non-classroom time.

How to find these jobs? Of course there are the traditional ways for law students, for example interviews with agencies, firms, and companies—at law school or at the student’s own initiative—that may have a significant environmental practice. And, of course, internships with agencies during the school year or over the summer give contacts that can be used to find out where the jobs may be opening up in those agencies. Several years ago, one of my students took a summer (paid) internship in Washington with EPA (a rare opportunity indeed); the next year, as a result of his experience and contacts, he accepted a choice job in the Office of the General Counsel dealing with issues of administrative law as they affect the agency.

Each agency generally hires its own personnel and advertises positions through government channels (see, for example, EPA’s website at http://www.epa.gov/careers), though there may also be a central employment office for the government as a whole (in the case of the federal government, it is the Office of Personnel Management; see its website for job hunting at http://jobsearch.usajobs.gov) that also maintains a register of job openings. Lawyers hired in the federal government tend to be “Schedule A” appointees who avoid the need for traditional competitive hiring procedures that apply to much of the federal civil service. Note also that the DOJ includes a large staff of attorneys who specialize in prosecuting and defending environmental suits for the U.S. government (see http://www.usdoj.gov/enrd/About_ENRD.html); many state attorneys general also get involved in environmental litigation (see Illinois, for example, http://www.ag.state.il.us/environment/envdivision.html).

Obtaining a job with an NGO or international agency may be the most difficult search to undertake; there is no central listing of job openings for those types of entities. There are a multitude of NGOs, some research-oriented, some focused on advocacy work involving legislatures and/or litigation. Searching the Internet may be the only way to get a sense of what NGOs and international environmental organizations exist, where, and what the respective focus of their attention is; some may post job openings on their web pages (though that is unlikely
from my experience). NGOs and international entities tend to be very selective since they have limited resources for staff, and the number of persons interested in working for them is very large indeed.

Finally, what about job satisfaction? From my experience, I am not aware of significantly more or less satisfaction with jobs in the environmental area at private firms and corporations than in other areas of the law. Turning to public practice, I have known quite a few individuals over the years who have worked with NGOs or for the government; they have tended to be excited with their work and have often made it a career. Wherever the employment, however, being an administrative lawyer dealing in the area of environmental law offers huge challenges and opportunities because of the complexity and importance of the subject matter, particularly in light of ongoing globalization that has particular impacts for environmental regulation (e.g., regulating greenhouse gas emissions).