

Political Science 246
Fall 2022

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ENVIRONMENTAL LAW AND POLICY

COURSE DESCRIPTION: An examination of federal environmental law and policy from a practical and historical perspective. This course will provide a basic foundational understanding of U.S. environmental law and help students develop the tools necessary to critique and improve environmental policy making. Topics include an overview of key federal environmental laws, some of the major loopholes, how environmental laws are shaped through agency regulation, judicial interpretation, political pressure, and their efficacy at safeguarding the environment and the public. The course will be taught through a combination of lectures, student-led group discussion of a specific cases, a group project and a group power point presentation. Students will finish by considering emerging environmental issues and ways to address them.

CREDIT HOURS: 4 credit hours. This course follows the College credit hour policy for 4-credit courses. This course meets twice weekly for 150 minutes per week. The course also includes independent out of class assignments and group work for 1 hour per week, including using assigned readings and other class materials (as noted in the syllabus assignments). These activities include preparation to lead or participate in group case discussion, work on group case discussion questions, the group project and team-based group project presentation preparation. Students are expected to spend at least 8 hours per week on assigned reading as discussed below. Length of reading assignments will vary given the complexity of the material assigned.

CLASS DAYS/TIMES and LOCATION: Tuesdays and Thursdays, 15:20-16:40 (i.e., 3:25 pm to 4:40 pm) in Hylan 201.

COURSE OUTLINE AND READINGS: The class will include considerable class discussion as well as lectures. There will be student led discussion groups of specific cases, one group project, two tests, and one group power point presentation. Grades will reflect class attendance and participation.

OFFICE HOURS: I have office hours 2:00-3:00 Tuesdays in Harkness 307; I am also happy to meet with you by appointment. The best way to contact me is by e-mail (tnoto3@ur.rochester.edu).

Graham Murphy is the teaching assistant for this class. Graham will hold office hours from 2:00-3:00 Wednesdays or by appointment. The best way to contact Graham is by e-mail (gmurphy8@u.rochester.edu)

TEXTS:

Royal C. Gardner, *Lawyers, Swamps and Money*, Island Press, 2011

James Salzman and Barton H. Thompson, Jr., *Environmental Law and Policy*, 5th ed. Concepts & Insights Series, Foundation Press, 2019

Richard J. Lazarus and Oliver A. Houck (eds), *Environmental Law Stories*, Foundation Press, 2005

Additional readings are available on the internet. The textbooks are also available on reserve in the library. It is also fine to buy used copies. All readings are *required* and should be read before class to enhance the value of both the lectures and the discussion.

ASSIGNMENTS:

Written assignments: Directions will be provided (and posted on Blackboard) for each assignment. Be sure to comply with all instructions, including *minimum* page limits. ***Academic honesty is important; you must include citations, quotation marks, and works cited.*** Points will be deducted for late work unless prior permission is given.

Group court case discussion leader assignments: The class will break into small groups to discuss cases. Discussion questions will be provided prior to class on Blackboard. *Each student is expected to lead a group court case discussion over the course of the semester.*

Group project: Reading and instructions for the group project will be posted on Blackboard prior to class. Students will work together in class on the group project. *Students will submit a self-evaluation for the group project.*

Group power point presentation: Instructions for the group power point presentation will be posted on Blackboard before Thanksgiving recess. Each student will be responsible for helping prepare and present their group's power point presentation. In addition, each student will sign up to participate as an audience member for another group's presentation.

GRADING: Attendance, participation, case discussion and homework count as 15%; group project 10%; group PowerPoint presentation 15% and each test counts as 30% of your semester grade.

COURSE LEARNING/OUTCOMES: Students will be able to demonstrate a basic foundational understanding of the historical context, purpose, statutory and programmatic goals, and evolution of the federal environmental laws and programs studied this semester as assessed by the midterm and final exams. Per the instructions provided for the group projects, students will demonstrate the ability to analyze legal issues in documents, such as proposed rules or draft legislative language, and construct a well-reasoned and well supported argument addressing the assigned issue. Students will develop an understanding of how court decisions impact environmental law and policy and how administrative agencies and Congress can, and in some cases currently are, changing environmental law and policy. Students will develop their skills in discussing

these issues via student led discussion, class discussion, and through team-based group project work inside and outside of the classroom.

ACADEMIC SUPPORT SERVICES: Students are encouraged to utilize academic support services: the Writing Speaking and Argument Program, <https://writing.rochester.edu> ; Center for Excellence in Teaching and Learning (CETL), www.rochester.edu/college/cetl/

ACADEMIC HONESTY: All assignments and activities associated with this course must be performed in accordance with the University of Rochester's Academic Honesty Policy. More information is available at: www.rochester.edu/college/honesty

DISABILITY RESOURCES: The University of Rochester respects and welcomes students of all backgrounds and abilities. In the event you encounter any barrier(s) to full participation in this course due to the impact of disability, please contact the Office of Disability Resources. The access coordinators in the Office of Disability Resources can meet with you to discuss the barriers you are experiencing and explain the eligibility process for establishing academic accommodations. You can reach the Office of Disability Resources at: http://disability@rochester.edu; (585) 276-5075; Taylor Hall. <https://www.rochester.edu/college/disability/faculty/syllabus-statements.html>

COVID-19: All students must comply with COVID-related requirements for masking and social distancing. Additional requirements may be required for course with laboratory, performance, or other activities that require more direct contact with other students. Any further instructions will be posted on Blackboard.

SCHEDULE OF CLASSES:

I. 1970s Environmental Decade

Sept. 1 Introduction and discussion – We will review the syllabus, expectations for this class, and class structure. Overview of career services enrichment in this class. Discussion: What is environmental law and policy? Why study it? Begin discussion of the Environmental Decade. *Sign up for group case discussion leader assignments.*

Reading: Salzman, ch.1; Lily Rothman, “Here’s why the Environmental Protection Agency was created” (Time Magazine, March 22, 2017)

Sept. 6 The 1970s ~ the Environmental Decade: Why the Environmental Decade? (passage of comprehensive suite of federal environmental laws, birth of EPA, the environmental movement, CEQ).

Reading: Salzman, ch.2; Meir Rinde, “Richard Nixon and the Rise of American Environmentalism” (Science History Institute, June 2, 2017)

II. Endangered Species Act (ESA)

Sept. 8 Historical underpinnings, purpose, and scope of ESA – listing process for threatened & endangered species & prohibitions on “takes”: Shift in societal attitudes towards wildlife, passage and purpose of ESA, the role of USFWS and NMFS. How does ESA work? T&E species, listing process, critical habitat designations, and take prohibition. Role of science.

Reading: Salzman, ch. 10 (IV. The Endangered Species Act only); ESA statute sections 3-4, 9 only

Sept. 13 ESA, Federal Agencies & TVA v. Hill: Section 7 consultation requirement, biological opinions and jeopardy opinions by the Services, impact on federal agency actions (is this a veto power?), TVA v. Hill and the “God Squad” exemption.

Reading: *Environmental Law Stories: The Story of TVA v. Hill*, pp 108-140; ESA statute Sec. 7 only

In class: Group discussion of TVA v. Hill case study

Sept. 15 The ESA and private lands: The challenge of balancing T&E species needs for protection and habitat management with landowner’s private property uses. ESA prohibition on “takes” and creative ways to balance T&E species and private property/development interests (ITPs, habitat conservation plans, safe harbor agreements, CCAAs).

Reading: ESA statute sections 4(d), 9, 10

Michael J. Bean. 2017. Landowner Assurances under the Endangered Species Act Working Paper. Madison, WI: Sand County Foundation/Environmental Policy Innovation Center

Sept. 20 Biodiversity Crisis, Climate Change & ESA: IPBES Report and the biodiversity crisis. What does climate change portend for the effectiveness of the ESA? To what degree should climate change be factored into listing decisions and ESA implementation? Is the ESA a good tool to address climate change mitigation or adaptation?

Reading: Handout

Sept. 22 “Modernizing,” strengthening or repealing the ESA – What’s Happening in Congress Group Project: Students are expected to have completed the reading prior to class so they can participate fully in the in-class group project.

Reading: Handout posted on Blackboard

In class group project

III. National Environmental Policy Act

Sept. 27 Context, purpose and structure of NEPA: The need for comprehensive consideration of environmental impacts in *all* aspects of federal agency action, the role of CEQ, and the importance of the action forcing provisions of NEPA and the terms: EA, EIS, FONSI and categorical exclusion.

Reading: Salzman, Ch 12, pp 339-355; NEPA statute

Group project and group project self-evaluation due

Sept. 29 Calvert Cliffs Coordinating Committee, Inc. v. U.S. Atomic Energy Commission: What is the lasting meaning of this case? Is NEPA substantive or a procedural statute? What is the long-term meaning for NEPA's role and judicial review?

Reading: *Environmental Law Stories: The Story of Calvert Cliffs*, pp 77-107

In class: Group discussion of Calvert Cliffs case study

Oct. 4 NEPA, Climate and Environmental Justice: We will discuss NEPA implementation, climate change and environmental justice. NEPA is particularly important for communities that suffer disproportionately from pollution and have often been deprived of prior public notice and the opportunity to comment on impending projects that may adversely impact the community, the local environment and public health.

Reading: Handout

Oct. 6 Test 1

Oct. 11 NO CLASS – FALL BREAK

IV. The Clean Water Act

Oct. 13 Historical context, purpose and structure of the CWA: Shift in public perception and evolving scientific understanding of wetland functions and values; *Riverside Bayview Homes* & the hydrologic cycle; extent of conversion of historic wetlands; activities and physical jurisdiction; core of 404 regulatory program (404(b)(1) Guidelines steps of avoidance, minimization and mitigation); roles of Army Corps of Engineers, US EPA, and states; general permits.

Reading: Salzman, ch. 10, pp 275-293; Gardner, ch. 1, pp 5-14; ch. 2, pp 15-34; CWA Sections 101, 404, 502 (Gardner, Appendix pp. 209-211)

Oct. 18 What are Waters of the U.S.? CWA jurisdiction over “waters of the U.S.” (“WOTUS”), uncertainty caused by Supreme Court’s decisions in *SWANCC* and *Rapanos & Carabell*, the 2015 WOTUS rulemaking, subsequent actions by the courts and the Trump Administration.

Reading: Gardner, ch. 3, pp 35-56

Solid Waste Agency of Northern Cook County (SWANCC) v. US Army Corps of Engineers, 531 U.S. 159 (2001) (Chief Justice Rehnquist’s majority opinion and the dissent by Justice Stevens)

In class: Group discussion of SWANCC case

Oct. 20 Section 404 program implementation, gaps, loopholes, challenges and successes: Some key statistics (percentage of permits granted and percentage of EPA vetos); “no net loss of wetlands” policy and wetland delineation manual debate; exemptions for ongoing agriculture & silviculture, drainage loophole and the Tulloch rule; wetland mitigation banking; and takings challenges.

Reading: Gardner, ch. 4, pp. 57-71, ch. 5, pp. 73-86

Oct. 25 NPDES – the primary regulatory strategy of the Clean Water Act: Events triggering passage of CWA, ambitious CWA goals, the broad prohibition on discharges to WOTUS without NPDES permits, “point sources,” Publicly Owned Sewage Treatment Works (POTWs) & indirect dischargers.

Reading: Salzman, ch. 7, pp. 173-188; CWA Sections 101, 301, and 402

Oct. 27 Clean Water Act – Enforcement: CWA as a strict liability statute with criminal and civil penalties. Enforcement role of EPA, states and citizens. Discharge Monitoring Reports (DMRs), citizen suits, and constraints.

Reading: *Environmental Law Stories: The Story of Laidlaw: Standing and Citizen Enforcement*, pp 200-236; CWA Sections 309, 505.

In class: Group discussion of *Laidlaw* case study

Nov. 1 Clean Water Act, Waterbody Health, Stormwater & Climate Change: How are the water quality standards and TMDL process supposed to work to protect the health of waterbodies? Issue of polluted runoff from nonpoint sources, dead zones, algae blooms, ocean acidification. What about climate change?

Reading: Salzman, ch. 7, pp. 189-202

“Toxic Waters: As Sewers Fill, Waste Poisons Waterways” (New York Times, Nov. 22, 2009)

Tom Philpott, “Why This Year’s Gulf Dead Zone is Twice as Big as Last Year’s” (Mother Jones, Aug. 14, 2013)

Optional reading: Robin Craig, “Climate Change Comes to the Clean Water Act: Now What?,” 1 Wash. & Lee J. Energy, Climate & Env’t 9 (2010)

Nov. 3 Test 2

V. Clean Air Act and Climate Change

Nov. 8 Context, purpose and regulatory strategy of the Clean Air Act: Historical air quality and public health concerns, the ambitious goals and regulatory strategy of the CAA, Uniform National Ambient Air Quality Standards (NAAQS), state implementation plans (SIPs) & balancing state/federal roles, nonattainment zones, new source performance standards (NSPSs) for stationary sources.

Reading: Salzman, ch. 5, pp. 115-137

Nov. 10 Whitman v. American Trucking – industry challenge over EPA’s NAAQs for ozone & particulate matter: Consider the economic, policy and legal arguments, including the regulatory compliance & human health costs, the CAA statutory language, and environmental policy goals re NAAQS for ozone & particulate matter.

Reading: *Environmental Law Stories: The Story of American Trucking: The Blockbuster Case that Misfired*, pp. 320-348.

In class: Group discussion of *American Trucking* case study

Nov. 15 CAA and Climate Change: *Massachusetts v. EPA*, Obama Administration’s Clean Power Plan, Trump’s March 28, 2017 Executive Order and subsequent EPA actions.

Reading: Salzman, Ch. 6, pp. 152-172

Abby Rabinowitz, “Undoing the Clean Power Plan Will Be a Legal Nightmare” (The New Republic, Mar. 29, 2017)

Massachusetts v. EPA, 549 U.S. 497 (2007)

In class: Group discussion of *Massachusetts v. EPA* case

Nov. 17 CAA and Climate Change: *West Virginia v. EPA*. Understanding the opinion and its significance for EPA’s authority to regulate. ***Signup for group PowerPoint presentations.***

Reading: *West Virginia v. EPA* (June 30, 2022)

Handout for group presentations

Nov. 22-24 **No Class – Happy Thanksgiving!**

VI. Hazardous waste, toxic air and citizen action

Nov. 29 CAA, toxics and citizen action: 1990 CAA Amendment and toxic air pollutants (shift from NESHAPs to industry by industry MACTs). Tonawanda, citizen air quality monitoring and NY DEC.

Reading: Salzman, ch. 5, pp. 138-142, ch. 6, pp. 143-152

“The Power of a Few: Residents use science and community action to stop an illegal polluter” (Citizen Science Community Resources), <https://csresources.org/our-history> (watch the video too)

“N.Y. Plant’s Neighbors Expose Regulatory Gaps” (NPR, Nov. 10, 2011)

Dec. 1 RCRA/CERCLA: The 1980s, Love Canal and passage of CERCLA; the reporting, clean up and liability provisions (joint and several, strict liability); frontline communities and CERCLA implementation. Why is RCRA so important?

Reading: Salzman, ch. 9

Dec. 6-13 **GROUP POWER POINT PRESENTATIONS**: Each student is responsible for participating in a group power point presentation and attending as an audience member for another group’s presentation.

Dec. 13 **Self-evaluation due**