

## ENVIRONMENTAL LAW AND POLICY

**Course Description:** This course provides a foundational understanding of U.S. environmental law, with a focus on existing federal environmental statutes and regulatory programs. Topics include the common law origins of environmental law, the historical genesis of federal regulation over human impact on the environment, the enduring role of the States in environmental regulation, along with an overview of critical federal environmental laws (such as the Clean Water Act, the Clean Air Act, and CERCLA/Superfund). Students will be introduced to how agencies implement and enforce these laws and how judicial decisions shape them. The course also touches on how and whether these decades-old laws are suited to address 21st-century challenges like climate change and environmental injustice.

**Credit Hours:** 4 credit hours

**Class Days/Times and Location:** Mondays and Wednesdays, 6:15 p.m. – 7:30 p.m., Goergen Hall Room 109

**Office Hours:** I have office hours 7:45 p.m. to 8:45 p.m. Mondays in Harkness 307, immediately after class. I am also happy to meet by appointment. The best way to contact me is by email ([sdaly3@ur.rochester.edu](mailto:sdaly3@ur.rochester.edu)).

### Texts:

Environmental Law and Policy 5th Edition (2019) (Salzman)  
James E. Salzman | Barton H. Thompson Jr.  
ISBN: 9781683287902

The Making of Environmental Law 2nd Edition (2023) (Lazarus)  
Richard J. Lazarus  
ISBN: 9780226695457

Additional readings referenced below will be made available on Blackboard. All readings are required and should be read before class to enhance the value of lectures and discussion. If any link on Blackboard does not work, please let Professor Daly know immediately by email.

### Grading:

Quizzes: 25% of course grade  
Midterm exam: 25%  
Final exam: 50% (Thursday, May 9, 12:30 p.m.)

### Quizzes and Course Attendance:

To incentivize student class attendance and completion of the assigned reading, brief “pop” quizzes will be given at the beginning of various class periods throughout the semester. The quizzes will be unannounced and distributed at the beginning of a given class period. If you are

present for the start of class, generally pay attention to lectures, and have a grasp of the assigned reading for that given class, you will do very well on the quizzes. If you are not present, never do the reading, or arrive late, you will not do well.

If you have a *legitimate excuse* for missing a class period and *notify me via email before class*, you will not be penalized for the occasional excused absence from the class or any quiz. Provided that I am notified before class, I recognize a number of reasons for legitimate absences from class, including illness, severe injuries or other medical conditions, religious or cultural holidays, athletic or debate competitions, or weddings/funerals/major life-cycle events. Absences without prior notification will be treated as unexcused, except in rare and unexpected emergencies (e.g., car accident or ER visit).

### **Midterm and Final:**

A focus of the midterm and final exams will be the application of course concepts to different factual scenarios. Students will be permitted to use as reference during the exams a single 8x11 inch piece of paper, with their handwritten notes on it. Both sides of the single piece of paper may be used. You may write as small or as large as you like, provided that: (i) all of it is handwritten and not typed, and (ii) your full name is prominently displayed so that I can find and identify it on the page. The pieces of paper must be turned in with your completed exams, although they will not be evaluated for grading or substance except for compliance with the foregoing rules.

### **Academic Honesty:**

Students must conduct themselves in accordance with the University's [Academic Honesty Policy](#). Quizzes, the midterm, and final exams are all closed book (except for the exception of the single piece of paper referenced above for the midterm and final). Reference to other materials, Artificial Intelligence, or consulting with others during the course of any given quiz or exam is a violation of the Academic Honesty Policy.

## Schedule of Classes:

### Introduction

*Wed., January 17 – Introduction*

- Course overview, structure, and introduction
- Expectations
- What is environmental law and policy? Who are the players and what are their roles?
- Introduction to challenges of regulating human impact on environment

*Mon., January 22 – Challenges of Regulating Human Impact on the Environment*

- Scientific uncertainty; complexity; dynamism; precaution; and controversy

**Salzman – pgs. 17-31**

**Lazarus – pgs. 13-38**

### Legal Foundations

*Wed., January 24 – Three Branches of Government (Congress, Agencies, and Courts)*

- Introduction to Three Branches
- Local, state, and federal laws
- Congressional Lawmaking
- Limits on Congress's power to legislate

**Salzman – pgs. 75-86**

**Lazarus – pgs. 39-53**

**Importance of State Environmental Law, 1 L. of Env'tl. Prot. § 7:1, pdf.**

*Mon., January 29 – Three Branches of Government (Congress, Agencies, and Courts)*

- Administrative agencies and administrative law
- *Chevron* deference

**Salzman – pgs. 65-75**

**Elliott, *Chevron Matters: How the Chevron Doctrine Redefined The Roles of Congress, Courts and Agencies in Environmental Law*, 16 Vill. Env'tl. L.J.L (2005), pdf.**

*Wed., January 31 – Three Branches of Government (Congress, Agencies, and Courts)*

- Federal Courts (structure and role)
- Reading a judicial opinion
- Judicial standing

**How to Read the Opinion of a Court, pdf.**

***Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), pdf.**

## **The National Environmental Policy Act**

*Mon., February 5 – The Industrial Revolution and the Common Law Origins of Environmental Law*

- Earliest forms of environmental regulation
- What is the common law?
- Common law remedies for environmental problems
- Pros and cons of the common law approach

**Salzman – Chapter 1, pgs. 3-16**

**Salzman – pgs. 51-63**

**Meiners & Yandle, Common Law and the Conceit of Modern Environmental Policy, 7 Geo. Mason L. Rev. 923 (1999), pdf.**

*Wed., Feb. 7 – The National Environmental Policy Act and the Start of the Environmental Decade*

- Introduction to NEPA and the birth of modern environmental law
- NEPA's ambitious purposes
- Structure of NEPA statute
- Role of the Council on Environmental Quality (CEQ)

**Salzman – pgs. 339-355**

**Lazarus – pgs. 81-89, 100-103**

**NEPA Statute, pdf.**

*Mon., Feb. 12 – NEPA Continued [No Office Hours Today; Remote Class]*

- Trigger for Environmental Impact Statements
- Requirements for Environmental Impact Statements
- The Importance of an Environmental Impact Statement

**NEPA Checklist, pdf.**

### **NEPA Regs**

**40 C.F.R. 1500.1 Policy Statement**

**40 C.F.R. 1501.1-.12 Nepa and Agency Planning**

**40 C.F.R. 1502.1-.24 Environmental Impact Statement**

**40 C.F.R. 1508.1 Definitions**

**Glicksman et al., *Throwing Precaution to the Wind: NEPA and the Deepwater Horizon Blowout* (2011), pdf.**

*Wed., Feb. 14 – NEPA Litigation*

- Early NEPA judicial decisions and the “Hard look”
- Evolution of NEPA into a “Procedural” statute
- NEPA's future

*Calvert Cliffs' Coordinating Committee, Inc. v. US Atomic Energy Commission*, 449 F.2d 1109 (D.C. Cir. 1971)

NEPA Law and Litig., § 1:5 (2023-2024), pdf.

Sam Kalen, *The Devolution of NEPA: How the APA Transformed the Nation's Environmental Policy* (Feb. 2009), pdf.

## **The Federal Clean Water Act**

*Mon., February 19 – Introduction to the Federal Clean Water Act*

- Water pollution generally
- Purpose and historical context of the Clean Water Act
- The Clean Water Act's ambitious goals
- Structure of the Statute
- Trigger for NPDES permits

**Salzman -- pgs. 175-196**  
**CWA §§ 101, 301, 402, 502**

*Wed., February 21 – The Clean Water Act, Point Source Regulation*

- Trigger for NPDES permits cont.
- NPDES technology-based standards
- Enforcement/citizen suits

***Friends of the Earth, Inc. v. Laidlaw Environmental Servs., Inc.*, 528 U.S. 167 (2000)**  
**CWA § 505**

*Mon., February 26 – The Clean Water Act, Non-Point Source Regulation*

- Water Quality Standards and the Role of States
- Non-point source pollution

**Salzman -- pgs. 196-199 (Stop at “Water Quality Trading”)**  
**Chapter, “North America's ‘Dead’ Sea,” *Toxic Algae and the Threat to Toledo's Water Supply* from The Death and Life of The Great Lakes, Dan Egan (2017)**

**“Pollution still flows through Clean water Act loophole.” (2022), pdf.**

**Rotman & Hollis, *Control of Nonpoint Source Pollution under the Clean Water Act* (2022), pdf.**

*Wed., February 28 – The Clean Water Act and Wetlands*

- Importance of wetlands in relation to clean water
- Section 404 permitting
- Interpretation of “Waters of the United States”

**Salzman -- pgs. 281-293**  
***Rapanos v. United States*, 547 U.S. 715 (2006), pdf.**

*Mon., March 4 – Clean Water Act and wetlands continued*

- “Waters of the United States” cont.
- Wetlands regulation after *Sackett*
- The CWA’s future

***Sackett v. EPA*, 598 U.S. \_\_ (2023)**

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*Wed., March 6 – MIDTERM – Administered in Class*

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### **The Federal Clean Air Act**

*Mon., March 18 – Clean Air Act Introduction*

- Air Pollution Generally
- Sources of Air Pollution
- Structure of the CAA
- NAAQS, SIPS, and Cooperative Federalism

**Salzman – pgs. 115-124**  
**Section 101(b)(1) of the CAA**  
**Sections 108, 109, and 110 of the CAA, 42 U.S.C. §§ 7408-7410**

*Wed., March 20 – Clean Air Act Continued*

- NAAQS, SIPS, and Cooperative Federalism cont.

***Whitman v. American Trucking*, 531 U.S. 457 (2001)**

*Mon., March 25 – Clean Air Act Continued*

- New Source Review
- Technology-based standards

**Salzman – pgs. 125-139**  
**Section 111 of the CAA, 42 U.S.C. § 7411**

## **Environmental Law and Climate Change**

*Wed., March 27 – Climate Change Introduction*

- Science of Climate Change
- The wicked problem of regulating greenhouse gas emissions

**Salzman – pgs. 152-174**

**Lazarus – pgs. 197-216**

*Mon., April 1 – Climate Change and the Clean Air Act*

- Mobile source regulation under the CAA
- Standing in Climate Change cases
- Endangerment finding for CO<sub>2</sub> by EPA

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

*Wed., April 3 – Climate Change and the Clean Air Act*

- The “Clean Power Plan” and generation shifting
- The Major Question Doctrine
- Congressional Inertia

***West Virginia v. EPA, 597 U.S. \_\_ (2022)***

*Mon., April 8 – The Endangered Species Act Introduction*

- ESA background and purpose
- Natural resources law vs. environmental law
- “Take” and Intro to Listing

**Salzman – pgs. 293-314**

*Wed., April 10 – The Endangered Species Act and Climate Change*

- ESA’s “Emergency room” approach
- Listing of a species and climate change as the basis for listing

**Strength in Numbers: Setting Quantitative Criteria for Listing Species under the Endangered Species Act, Environmental Law § 46:1, pdf.**

**The ESA and Climate Change, 3 L. of Env'tl. Prot. § 21:60, pdf.**

**Endangered species and Climate Change,**

**<https://www.npr.org/transcripts/1198656904>**

*Mon., Apr. 15 – Climate Change litigation*

- The Common Law Strikes Back
- Environmental rights movement and State Constitutions

***Held v. State of Montana*, No. CDV-2020-307 (1<sup>st</sup> Dist. Ct. Mont., Aug. 14, 2023), pdf.**

**Sources of state environmental law, State Constitutional Provisions, 1 L. of Env'tl. Prot. § 7:3, pdf.**

## **Environmental Justice and Waste**

*Wed., Apr. 17 – The Resource Conservation and Recovery Act and CERCLA/Superfund*

- The waste problem
- RCRA's "Cradle to the Grave" solution to hazardous waste
- The abandoned hazardous waste site problem
- Superfund/CERCLA's Joint and Several Liability solution to abandoned waste sites

**Salzman -- pgs. 235-271**

**Lazarus -- pgs. 125-127 (Start at "The single most..." and end at "CERCLA and ANILCA in 1980...")**

*Mon., April 22 – RCRA and the Rise of the Environmental Justice Movement*

- Introduction to environmental justice and environmental racism
- The historical origins of the environmental justice movement
- The siting of hazardous waste facilities

**Dorceta Taylor, *Toxic Communities: Environmental Racism, Industrial Pollution, and Residential Mobility* (2014), Chapter 1 – historical antecedents for environmental justice, pdf.**

***Toxic Wastes and Waste in the United States, A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites, Executive Summary* (1987), pdf.**

*Wed., April 24 – Legal Tools for Effectuating Environmental Justice*

- Title VI of the Civil Rights Act of 1964
- NEPA and environmental justice

**Executive Order 12898 of Feb. 11, 1994, with Presidential Memo**

**Environmental Justice and Civil Rights in Permitting, FAQ (Aug. 2022)**

**<https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant.pdf>**



**EPA Letter to Louisiana Dep't of Environmental Quality and Dep't of Health, Oct. 12, 2022, Re: Letter of Concern, pdf.**

**“Louisiana was open to Cancer Alley concessions. Then EPA dropped its investigation,” AP (Nov. 1, 2023), pdf.**

**Godshall and Lowell, Environmental justice in judicial opinions (Oct. 28, 2022), pdf.**

*Mon., April 29 – Wrap up*

**Lazarus, pgs. 295-344**

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*Final Exam: Thursday, May 9 at 12:30 p.m.*