

## ENVIRONMENTAL LAW AND POLICY<sup>1</sup>

**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.

**Course Objectives and Learning Outcomes:** In this course, students will:

- *Develop an understanding of the U.S. government and legal system, with an emphasis on the roles of Congress, federal agencies, and federal courts;*
- *Be expected to read and understand environmental statutes, regulations, and judicial decisions;*
- *Learn to appreciate the unique challenges posed by successful environmental lawmaking;*
- *Become familiar with major federal environmental laws and programs, including the Clean Water Act, Clean Air Act, NEPA, CERCLA, and RCRA;*
- *Discover how laws can exacerbate or ameliorate environmental injustice;*
- *And much more!*

**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 and Contact:** I have office hours 7:45 p.m. to 8:45 p.m. Monday nights in Harkness 307, following the evening's 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)).

Please note that, as a practicing lawyer and not a full-time teacher, I tend to check my UR email only once per day. I try my best to review and respond to any UR emails within 24-48 hours.

**Teaching Assistant:** Aidan Flanders ([aflande3@u.rochester.edu](mailto:aflande3@u.rochester.edu)).

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<sup>1</sup> Version 1.0 (Jan. 18, 2026). *Professor Daly reserves the right to update and revise the syllabus from time to time over the course of the semester.*

**Required Texts:**

Environmental Law and Policy 6th Edition (2024) (Salzman)

James E. Salzman | Barton H. Thompson Jr.

ISBN: 978-1-68561-572-7

The Making of Environmental Law 2nd Edition (2023) (Lazarus)

Richard J. Lazarus

ISBN: 9780226695457

\*\*\*This title is available on Reserve at the Rush Rhees Library, Reserve Collection\*\*\*

Unless otherwise specified, 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.

Additional readings referenced below will be made available on Blackboard.

**Pre-requisite Courses:** None

**Final grades will be based on the following components:**

Quizzes: 15%

Take home exam 1: 5%

Take home exam 2: 5%

Midterm exam: 25%

Final exam: 50% (Saturday, May 9, 12:30 p.m.)

**Methods for Assessing Grades:****Quizzes:**

To incentivize class attendance and completion of the assigned reading, brief “pop” quizzes will be given at the beginning (or end) of various class periods throughout the semester. The quizzes will be unannounced and distributed during a given class period. If you are present and on time for class, generally pay attention to lectures, and have a general grasp of the assigned reading for that class period, 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.

In addition to quizzes, occasional in-class work or other assigned activities (e.g., giving an informal presentation on a topic, looking up a local environmental issue, etc.) may be awarded quiz credit, typically on a “*did you perform the task with adequate effort, yes or no?*” basis.

Your one lowest quiz score during the semester will be dropped and excluded from the calculation of your quiz grade.

**Attendance:**

Your quiz score for the semester will largely be dependent on your successful ability to attend lectures. 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 or in-class assignment. 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).

**Class Participation:**

Active student engagement and participation in class is very important to me. I therefore offer a total of **two (2) extra credit bonus points** that may be added to a student's test scores, one for the midterm and the other for the final exam, in order to incentivize student participation during class sessions.

The bonus point will be awarded if I determine that the student has made a positive contribution to class discussions by, for example, responding thoughtfully to questions posed, asking sharp and informed questions, building upon the thought of another student, while at the same time not serving as a distraction or impediment to in-class learning. In general, ***quality of participation is more important than quantity***. Students will have an opportunity on the exams to make their case as to why they believe they ought to be awarded the participation bonus point. The decision to award the point is entirely within my discretion.

**Take-Home Exams:**

Twice during the semester, students will be assigned relatively short, open book "Take Home Exams." The purpose of the Take Home Exams is to expose students to the types of short answer questions that will be featured in the Midterm and Final Exams (which are administered in class).

The primary benefit of the Take Home Exams is to practice *your* ability to think analytically based on the readings and lectures and then respond to the short answer prompt clearly and accurately when the stakes as to your grade are relatively low so that you're better prepared to do so on the Midterm and Final. A substantial portion of the Take Home Exam grades are awarded based on "completion." Thus, getting the "*right*" answer (assuming there is one) is not critical to succeeding on the Take Home exams. You can complete the take home exams individually or as a group and with access to your notes. The use of generative AI is generally discouraged but for purposes of the take home exams I cannot stop you from using it.

**Midterm and Final Exams (Administered in Class):**

Exams typically consist of true/false questions, multiple choice, and short answer questions.

The short answer questions typically involve the application of course concepts to various factual scenarios, similar to the "Problems" we discuss during class periods and which are featured in the Take Home Exams.

Students will be permitted to and incentivized to use as reference during the exams a single 8x11 inch piece of paper, with their handwritten notes on it. The notes page must be handwritten and not typed or computer generated. 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 and will be awarded completion credit, although they will not be evaluated for grading or substance except for completion and compliance with the foregoing rules.

Unless otherwise specified herein or during the course of the semester, there are no “extra credit” opportunities in this course available to individual students. Grades are final except for administrative (i.e. mathematical) calculation errors or to the very limited extent otherwise authorized by any applicable University Policy.

### **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). With the sole exception of the Take Home Exams (see discussion above), 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.

### **Class Cancellations and Rescheduling:**

As a practicing lawyer, I sometimes have court or public hearing appearances or professional travel obligations that may conflict with one or more class periods during a semester. I may not always have lots of advance notice when these pop up. I may need to cancel a class period on relative short notice and will send out an email notice. Depending on the number of cancelled class periods, I reserve the right to try to reschedule one or more cancelled class periods.

## **Schedule of Classes:**

### **Introduction**

*Wed., January 21 – 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

*Fri. (!), January 23 – Challenges of Regulating Human Impact on the Environment*

- Scientific uncertainty; complexity; dynamism; and controversy

**Salzman – pgs. 17-31**

**Lazarus – pgs. 13-38**

*Mon., January 26 – Challenges of Regulating Human Impact on the Environment, Cont.*

- The groundwater problem

**Review [Hypothetical] Federal Groundwater Mgmt. & Protection Act of 2026**

**NYTimes “America is Using Up Its Groundwater Like There’s No Tomorrow”**

[https://www.nytimes.com/interactive/2023/08/28/climate/groundwater-drying-climate-change.html?unlocked\\_article\\_code=1.qU4.KN4h.0XgQarEvGZ72&smid=url-share](https://www.nytimes.com/interactive/2023/08/28/climate/groundwater-drying-climate-change.html?unlocked_article_code=1.qU4.KN4h.0XgQarEvGZ72&smid=url-share)

**Video- PCAST: Understanding Groundwater (Dec. 1, 2023), from ~3:00 to ~29:00**

<https://www.youtube.com/watch?v=iofKuMuU4Iw>

### **Legal Foundations**

*Wed., January 28 – 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. 75-89**

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

**Lazarus – pgs. 39-53**

*Mon., February 2 – Three Branches of Government (Congress, Agencies, and Courts)*

- Congressional Lawmaking
- Limits on Congress's power to legislate
- Administrative agencies and administrative law

**Salzman – pgs. 66-77**

*Wed., February 4 – Three Branches of Government (Congress, Agencies, and Courts)*

- Administrative Agencies
- Federal Courts (structure and role)

**Salzman – pgs. 66-77 (continued from last class)**

### **The Rise of Modern Environmental Law and the National Environmental Policy Act**

*Mon., February 9 – The Industrial Revolution and the Common Law Origins of Environmental Law*

- 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.**

**Article: Legal Standing for Nature: The Road Not Taken (McKeown) (2023)**

*Wed., February 11 – The Start of the Environmental Decade*

- Earliest forms of environmental regulation
- What is the common law?
- Common law remedies for environmental problems
- Birth of modern environmental law

### **Take Home Exam Assigned**

**Salzman – Chapter 1, pgs. 3-16**

**Meiners & Yandle, “Common Law and the Conceit of Modern Environmental Policy” (1999)**

*Mon., February 16 – The National Environmental Policy Act and the Start of the Environmental Decade*

- Introduction to NEPA

- NEPA's ambitious purposes
  - Structure of NEPA statute
  - Trigger for Environmental Impact Statements

**Salzman – pgs. 355-366**

**NEPA Statute, pdf.**

**Lazarus – pgs. 81-89, 100-103**

- **Take Home Exam Deadline**

*Wed., Feb. 18 – NEPA Cont.*

- Requirements for Environmental Impact Statements
- The Importance of an Environmental Impact Statement
- NEPA Litigation

**Salzman – pgs. 366-373**

**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**

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

*Mon., February 23 NEPA Continued*

- ***Seven County Infrastructure Coalition v. Eagle County (2025)***

**The Federal Clean Water Act**

*Wed., February 25 -- 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. 185-206**

**CWA §§ 101, 301, 402, 502**

*Mon., March 2 – The Clean Water Act, Point Source Regulation*

- Trigger for NPDES permits cont.
- NPDES technology-based standards

- Enforcement/citizen suits

**Saltzman – 95-110 (stop at standing)  
CWA § 505**

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Wed., March 4 – *MIDTERM* – Administered in Class

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**---- SPRING BREAK ----**

*Mon., March 16 – The Clean Water Act, Non-Point Source Regulation*

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

**Salzman – pgs. 206-209 (Stop at “Water Quality Trading”)**

**“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., March 18 -- The Clean Water Act and Wetlands*

- Importance of wetlands in relation to clean water
- Rivers and Harbors Act of 1899
- Section 404 permitting
- Interpretation of “Waters of the United States”

**Salzman – pgs. 295-307**

*Mon., March 23 – 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)**



## **The Federal Clean Air Act**

*Wed., March 25 – Clean Air Act Introduction*

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

**Salzman – pgs. 121-130**

**Section 101(b)(1) of the CAA**

**Sections 108, 109, and 110 of the CAA, 42 U.S.C. §§ 7408-7410**

*Mon., March 30 – Clean Air Act Continued*

- NAAQS, SIPS, and Cooperative Federalism cont.

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

*Wed., April 1 – Clean Air Act Continued*

- New Source Review
- Technology-based standards

**Salzman – pgs. 131-144**

**Section 111 of the CAA, 42 U.S.C. § 7411**

## **Environmental Law and Climate Change**

*Mon., April 6 – Climate Change Introduction*

- Science of Climate Change
- The wicked problem of regulating greenhouse gas emissions
- Group discussions and presentations

**Salzman – pgs. 160-173**

**Lazarus – pgs. 197-216**

*Wed., April 8 – Climate Change and the Clean Air Act*

- Group discussions cont.

*Mon., April 13*

- Intro to Climate Change under the Clean Air Act
- Endangerment finding for CO<sub>2</sub> by EPA and its undoing

**Salzman – pgs 173-183**

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

*Wed., April 15 - Climate Change and the Clean Air Act*

- The Major Question Doctrine
- Trump Administration Rollback

**Salzman – pgs 173-183 (cont.)**

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

***NY Times Article: In Game-Changing Climate Rollback, EPA Aims to Kill a Bedrock Scientific Finding***

### **Waste, Superfund, and Environmental Justice**

*Mon., April 20 – The Resource Conservation and Recovery Act*

- The waste problem
- RCRA’s “Cradle to the Grave” solution to hazardous waste
- The abandoned hazardous waste site problem

**Excerpts from RCRA and Superfund: A Practice Guide**

**Salzman 247-265**

**Lazarus, 125-128**

*Wed., April 22 – Superfund/CERCLA*

- Joint and Several Liability solution to abandoned waste sites
- PFAS cleanup and regulation
- Introduction to environmental justice and racism

**Salzman 265-285**

**PFAS article**

*Mon., April 27 - RCRA and the Rise of the Environmental Justice Movement*

- Introduction to environmental justice and environmental racism
- In-class discussion about environmental justice

**Article: Environmental Justice: Grassroots Activism and Its Impact on Public Policy Making (Bullard and Johnson) (2000)**

**Article: Environmental Racism: A Skeptic’s View (Jeffreys) (1994)**

*Wed., April 29 – Legal Tools for Effectuating Environmental Justice*

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

**Chapter 5, “Enforcing Environmental Protections” from Toxic Communities, environmental racism, industrial pollution, and residential mobility (Taylor 2014)**

**Article: “Why the EPA Backed Down” (Sept. 23, 2024), the Atlantic**

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