

Class attendance & participation 5%; Group project and class discussion assignments 10%; Short papers 25%; Midterm 25%; Final 35%

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

Group case discussion #1: A small group of students will come to class prepared to lead class discussion of this case. All other students should come to class prepared to discuss the case.

Sept. 16 The ESA and private lands ~ the challenge of balancing T&E species The

maintenance/management, and balancing T&E species and private property needs/interests through such instruments as: incidental take permits, habitat conservation plans, safe harbor agreements, candidate conservation agreements, candidate conservation agreements with assurances, and voluntary conservation programs.

Reading: Salzman, ch. 10 (pp 287-301); ESA statute sections 4(d), 9, 10

I will distribute instructions and reading materials for Sept. 18th group project and assign groups in class.

Sept. 18 Group project/T&E species case study: This is your opportunity to grapple with the challenges of T&E species protection and recovery as applied to a particular species. Each student will have a role to play representing a stakeholder group (e.g., private landowner, conservation organization, state wildlife agency, U.S. Fish & Wildlife Service). Students will break out into their groups to discuss the assigned issue and try to come to consensus on how to resolve the issue. Each group will report on the results of their negotiations at the end of class.

Reading: Endangered species case study reading materials.

ESA group project: Come to class prepared to participate in negotiation process.

Sept. 23 relationship to T&E species international protection efforts:
home (How do we measure success (is it fair to measure by extinctions averted, species recovering, species delisted?))? What are the implications of de-listing a species, both for the species and cooperative federalism impacts?). Protection of T&E species abroad: ESA listings & USFWS/NMFS role, Convention on International Trade in Endangered Species (CITES), the Convention on Biological Diversity, the IUCN Red List, and
city Conservation Act 1999.

Reading

Act Reforms in an Era of Mass Extinction (William & Mary Environmental Law and Policy Review, Vol. 22, 1998) *only pp. 227-246, 274-311*

III. National Environmental Policy Act (Sept. 25-Oct 2)

Sept. 25 Historical 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, pp 321-336; NEPA statute

Sept. 30 Calvert Cliffs Coordinating Committee, Inc. v. U.S. Atomic Energy Commission: What is the lasting meaning of this case? Is it a pyrrhic victory for the AEC and the nuclear energy industry? What is the long-judicial review? Is this a story of judicial restraint and the limits of judicial authority that, ironically, helped l

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

Group case discussion #2: A small group of students will come to class prepared to lead class discussion of this case. All other students should come to class prepared to discuss the case.

I will provide handout in class for Short Paper #2 due Oct 2nd.

Oct. 2 NEPA implementation, challenges, and legacy: is NEPA a success story? Assessing the complicated legacy of this simplest of environmental statutes.

We Get Divorced?: The Curious Case of NEPA and
2009)

Monsanto, et al. v.

Geerston Seed Farms, et al., U.S. Supreme Court, June 21, 2010.

Short Paper #2: Write a 1½ -2 page memo from the USDA Office of General Counsel to APHIS providing your recommendation re whether an EA or an EIS is required by NEPA before APHIS can lift ban on planting GM Alfalfa. **Due in class Oct. 2nd**

IV. The Clean Water Act Jurisdictional waters & Protection of Wetlands and Small Streams in 404 Permit Program (Oct. 7-16)

Oct. 7 Historical context, purpose and structure of the 404 program: Shift in public perception (from swamp to wetlands); 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

Maximum Daily Loads (TMDLs), load allocations and waste load allocations, state and federal agency roles & strategies, dead zones & algal blooms.

Reading: Salzman, ch. 4, pp. 87-98; *Lead Industries Association, Inc. v. EPA*, 647 F.2d 1130 (D.C. Cir. 1980) (read only parts I, II, V and IX).

Short Paper #3: due in class.

Nov. 13 *Whitman v. American Trucking Associations* industry challenge over
_____ 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; CAA Sec. 109(b)(1),

Group case #4: A small group of students will come to class prepared to lead class discussion of this case. All other students should come to class prepared to discuss the case.

Nov. 18 CAA & regulatory innovation: Regulation of mobile sources and toxic air pollutants (shift from NESHAPs to industry by industry MACTs), trading & acid rain, ozone depletion & Montreal Protocol. CAA wrap up.

Reading: Salzman, ch. 4, pp. 98-120.

VI. CERCLA, RCRA and the 1980s

Nov. 20 Historical underpinnings, purpose and statutory overview of the CERCLA
_____ Love Canal, the lame duck Congress and strong public support for the Superfund; the reporting, clean up and liability provisions (joint and several, strict liability); how the legal and scientific recordkeeping and waste disposal; the exemption for recycling.

Reading: Salzman, ch. 8, pp. 198-238

I will distribute reading materials for *Dec. 2nd* class discussion.

Nov. 25 NO CLASS.

Dec. 2 CERCLA case study: Guest speaker TBA. We will also discuss instructions for the last short paper Short Paper #4 due Dec. 11th.

Reading: CERCLA reading materials.

I will distribute list of topics and instructions for Short Paper #4 **due Dec. 11th**.

