

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, a group project focused on a specific case study, and student-led discussions about key aspects of environmental laws. Students will finish by considering emerging environmental issues and ways to address them.

CREDIT HOURS: 4 credit hours.

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

GRADING: Attendance, participation, homework and case discussion 15%; group projects 10%; each test counts as 25% of your grade.

ACADEMIC SUPPORT SERVICES: Students are encouraged to utilize academic support services: the Writing Speaking and Argument Program, _____ ; Center for Excellence in Teaching and Learning (CETL), _____

Reading: Salzman, ch.1

Meir Rinde, “Richard Nixon and the Rise of American Environmentalism”
(Science History Institute, June 2, 2017)

Sept. 2 The 1970s Environmental Decade: Natalya will lead0048>

Guest speaker: Melinda Taylor, University of Texas Law School and former director of the Ecosystem Restoration Program at EDF (invited)

Sept. 16 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: Michael C. Blumm and Kya B. Marienfield, “Endangered Species Act Listings and Climate Change: Avoiding the Elephant in the Room,” 20 Animal L. 277 (2014)

Guest speaker: Jim Howe, The Nature Conservancy, Rochester NY (invited)

Sept. 21 “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

Guest speaker: Jo Stiles, Legislative Director for Representative Joe Morelli (invited)

III. National Environmental Policy Act

Sept. 23 Context,

address climate change considerations? And what impact have the Trump and Biden Administrations had on NEPA policy?

Reading:

CEQ August 1, 2016 Guidance on consideration of GHGs and effects of climate change in NEPA reviews

March 28, 2017 Trump Executive Order: “Promoting Energy Independence and Economic Growth”

January 20, 2021 Biden Executive Order: “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis”

Guest speaker: TBA

Oct. 5 NEPA 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. Justice40 Initiative.

Reading:

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. 19 What are Waters of the U.S.?

Nov. 2 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)

Guest speakers: Lauren Townley NY DEC

Nov. 4 Test 2

V. Clean Air Act and Climate Change

Nov. 9 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. 11 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. 16 CAA and Climate Change: *Massachusetts v. EPA*, Obama Administration’s Clean Power/ Adm

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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)

Guest speaker: James Salzman, UCLA Law School and the Bren School

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

Nov. 18 CAA and 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. Obama and Trump administrations and CAFE standards. 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),
[_____](#) (watch the video too)

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

James McCandless, “U.S. Automakers React to Biden Administration’s EV Push, New CAFE standards” (Newsweek, Aug. 5, 2021)

Guest speaker: Aaron Mango, Assistant U.S. Attorney, Buffalo?

Nov. 23 CAA review class

Nov. 25 No Class – Happy Thanksgiving!

Nov. 30 Test 3

VI. CERCLA, RCRA and the 1980s

Dec. 2 RCRA/CERCLA: The 1980s, Love Canal and passage of CERCLA; the reporting, clean up and liability provisions (joint and several, strict liability); and CERCLA implementation. RCRA’s role in preventing future Superfunds. Recordkeeping and waste disposal; the exemption for recycling. How does RCRA’s track record and legacy compare with CERCLA?

Reading: Salzman, ch. 9

Guest speaker: May Wall, partner, Winston Strawn (retired) (invited)

