

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).

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 e, i or

Schedule of Classes:

Introduction

Wed., January 17 – Introduction

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

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

- x 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)

- x Introduction to Three Branches
- x Local, state, and federal laws
- x Congressional Lawmaking
- x 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)

- x Administrative agencies and administrative law
- x Chevrondeference

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)

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

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

- x Introduction to NEPA and the birth of modern environmental law
- x NEPA's ambitious purposes
- x Structure of NEPA statute
- x 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]

- x Trigger for Environmental Impact Statements
- x Requirements for Environmental Impact Statements
- x 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*

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

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

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

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

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

- x Water Quality Standards and the Role of States
- x 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

- x Importance of wetlands in relation to clean water
- x Section 404 permitting
- x 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

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

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

Wed., March 6 – MIDTERM Administered in Class

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

The Federal Clean Air Act

Mon., March 18 – Clean Air Act Introduction

- x Air Pollution Generally
- x Sources of Air Pollution
- x Structure of the CAA
- x 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

- x NAAQS, SIPS, and Cooperative Federalism cont.

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

Mon., March 25 – Clean Air Act Continued

- x New Source Review
- x 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

- x Science of Climate Change
- x 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

- x Mobile source regulation under the CAA
- x Standing in Climate Change cases
- x Endangerment finding for CO₂ by EPA

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

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

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

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

Mon., April 8 – The Endangered Species Act Introduction

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

Salzman – pgs. 293-314

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

- x ESA’s “Emergency room” approach
- x 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

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

Held v. State of Montana, No. CDV-2020-307 (1st 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

- x The waste problem
- x RCRA's "Cradle to the Grave" solution to hazardous waste
- x The abandoned hazardous waste site problem
- x 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

- x Introduction to environmental justice and environmental racism
- x The historical origins of the environmental justice movement
- x 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

- x Title VI of the Civil Rights Act of 1964
- x 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>

