

Introduction to Environmental Law

Syllabus as of December 11, 2018

ENRP 6140

Spring 2019

Wednesday, 7:10-9:40 pm

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Course description

Environmental law is one of America's greatest achievements and gravest disappointments. Environmental law was created in the early 1970s by a virtually unanimous Congress and a Republican President. It dramatically reduced air and water pollution that had killed thousands of people and caused rivers to burn. Despite its many successes, today environmental law seems unable to address the central challenge of our time—climate change—and instead is among the most polarizing political issues between the political parties. Yet environmental law remains the central way we translate our societal goals for the environment into action, so it remains a critical part of the environmental solution. This class will help you understand modern environmental law—its genesis, its strengths, and its weaknesses—and how you can use it, and perhaps shape it, in your career.

The goal of this class is to have you understand how environmental law works and how it can help to achieve your environmental goals. You will learn important aspects of environmental law that you may encounter in your career—how laws are made, how regulations work, and how to read and understand a court decision. You won't become an environmental lawyer, but you will be able to understand and explain to others what environmental law is, what it can do, and what it cannot do. You will be able to see ways to use the laws to your advantage and ways that environmental law may stand in the way of things you want to achieve. You will also become conversant in how government operates, the respective roles of the three branches of government, and the relative roles of the federal and state governments. Along the way, we will use group and class exercises to have you argue a case for a client, present a court decision to the class, and come to understand the complex political factors that shape environmental law.

Course objectives

The objective of this course is to have you become conversant in environmental law so you can understand how to use the law to meet your objectives and understand how the law may affect you and others. Our hope is that by the end of the course, you can:

- Understand the genesis of modern environmental law, the factors that shaped it, and the way today's political forces frustrate changing environmental law;
- Explain in broad terms each major environmental law, what it covers, and the primary tools it uses to achieve its objectives;

- Use the primary tools of environmental law (statutes, regulations, and court decisions) as well as other governance tools to craft solutions to existing and future environmental challenges;
- Appreciate the role that the rule of law plays in creating a stable society, economy, and environment and how this impacts people, particularly disadvantaged communities;
- Explain the various levels of government and their relative roles so that you can navigate legal hurdles and find legal opportunities to achieve environmental objectives; and
- Understand diverse perspectives about environmental issues and find ways to negotiate solutions.

As you work through this course, ask yourself these questions for each law and regulatory program that we cover:

- What is the problem that the law is addressing? Is it the right problem? Has the problem changed since the law was enacted?
- What is the solution the law brings to the problem? What are the strengths and weaknesses of the solution? Are there better solutions, including outside of law?

Course materials

We will be using Aagaard, Owen, and Pidot's *Practicing Environmental Law*. Additional readings will be posted in Blackboard.

The readings and materials are central components of this course. We will expect you to have done the assigned reading before class. Our class lectures and exercises will build upon this material, not repeat it. If you do not do the readings, you are unlikely to succeed in this class and you will undermine the progress of your peers.

Class assessments

The assessment of how you perform in this class will be based upon the components summarized below. The full assignment associated with each assessment will be posted in Blackboard under "Assignments." Please note that many of these activities are meant to help you learn and assimilate the material as well as to assess your class performance.

Midterm and Final Exams (50%)

The purpose of the midterm and final exams are to assess your understanding of the material and critical thought about the course content. Five, single-point questions start each exam that are meant to test functional knowledge. These have 1-2 sentence responses. The remainder of the exam is one or more detailed fact patterns and you are asked how the various laws might apply. The exams are mostly focused on spotting issues that trigger environmental law's applicability and basic knowledge about the ways the specific environmental laws work. A copy of last year's midterm and final, and the model answers, are posted in Blackboard under "Tests."

Class Participation and Presentations (35%)

Case Presentation (10%)

The purpose of this assignment is to assess your ability to find, summarize, and analyze a court decision and present its key content to peers. Each student will be asked to take responsibility for one court decision that covers a major principle or topic in the class. You will prepare and deliver a 12-minute presentation to the class. After each presentation, the class will spend five minutes discussing the case in a discussion that you will lead. Students may ask clarifying questions, voice different opinions on interpretation of the decision, or bring other perspectives to the discussion. Each discussion will be limited to 8 minutes. Professors will provide feedback during this discussion and will provide a grade and be available for any further follow-up outside of class. These presentations will take place over the course of the semester.

Class Attendance and Participation (15%)

“Showing up is 80% of life,” according to Woody Allen. Class participation will be based upon 1) class attendance, in adherence to the class attendance policy below; 2) your willingness to participate in class discussion and exercises; 3) demonstration of having prepared for class by performance on mini essays and quizzes; and 4) thoughtfulness of class participation. This score is not dependent on *quantity* of participation. Students who find themselves participating more than others should allow sufficient space in the class so that others may participate; and those students reticent to speak should prepare before class at least one observation that they gleaned from each reading that they could share in class as a way to reduce anxiety about participating.

Represent a Party (10%)

The purpose of this exercise is to have you work through primary materials to identify which factual issues are important and which are not; to understand other parties’ arguments and perspectives; and to argue a perspective with which you may not agree. You will be given a variety of raw materials about the Dakota Access Pipeline to read before class. You will be assigned to a group to represent one of four parties (EPA; Army Corps; Dakota Access Pipeline; Standing Rock Sioux), and you will argue one issue on behalf of your client as if you are arguing to the Court of Appeals. After hearing the arguments, the class will discuss the strengths and weaknesses of the arguments and how to analyze the controversy.

Mini Essays and Pop Quizzes (5%)

The purpose of mini-writing assignments and quizzes is to verify that you are comprehending the material and to help you assimilate and process the course content. You will be asked to take brief quizzes or surveys or to submit brief papers before or after class. These are usually just a few very specific questions or less than a page of writing. The exercises also help us recalibrate the course material and identify areas that need additional explanation or attention.

Writing Assignments (10%)

Community Memo (5%)

The purpose of this memorandum is to assess your understanding of the common law legal remedies available apart from statutory environmental law and to give you a chance to be creative by imagining other nonlegal approaches to environmental controversies. You will be

given a fact scenario and asked to write a two-page memorandum that briefs your client, a neighborhood association, on their legal remedies for a pollution problem and how likely the community is to get relief. The memorandum should demonstrate understanding of the legal remedies but also include at least a paragraph on other non-legal remedies or strategies you propose.

Company Strategy Memo (5%)

The purpose of this assignment is to demonstrate functional knowledge of the environmental statutes and to practice analytical thinking and writing. You will be given a fact pattern of a company that wants to achieve a specific environmental goal and the current legal/political facts that the company faces. You will be asked to write a two-page memo that proposes a path forward for the company to meet its goals.

Grading

In grading, we will weigh the class assessments discussed above, based upon 100 possible points:

Final Exam:	30
Midterm Exam	20
Class Presentations	20
Class Attendance and Participation	15
Writing Assignments	10
Mini-Essays and Quizzes	<u>5</u>
	100

Grades for the course as a whole will reflect the total points adjusted upward to reflect the total points achieved by the top performing student. These letter grades reflect the following philosophy:

- **A Excellent:** Exceptional work for a graduate student. Work is unusually thorough, well-reasoned, creative, methodologically sophisticated, and well written. Work is of exceptional, professional quality.
- **A- Very Good:** Very strong work for a graduate student. Shows signs of creativity and a strong understanding of appropriate analytical approaches, is thorough and well-reasoned, and meets professional standards.
- **B+ Good:** Sound work for a graduate student; well-reasoned and thorough, without serious analytical shortcomings. Indicates the student has fully accomplished the basic objectives of this graduate course.
- **B Adequate:** Competent work for a graduate student with some evident weaknesses. Demonstrates competency in the key course objectives but the understanding or application of some important issues is less than complete.
- **B- Borderline:** Weak work for a graduate student but meets minimal expectations. Understanding of key issues is incomplete. (A "B-" average in all courses is not sufficient to sustain 'good standing'.)
- **C+ / C / C- Deficient:** Inadequate work for a graduate student; rarely meets minimal expectations. Work is poorly developed or flawed by numerous errors and misunderstandings of important issues.
- **F Unacceptable:** Work fails to meet minimal expectations or course credit for a graduate student. Performance has consistently failed to meet minimum course requirements. Weaknesses and limitations are pervasive.

Class Schedule and Assignments

Class	Class Topic	Readings	Assignments
	A. Government's Organization and Function and How They Shape Environmental Law		
Jan. 16	Introduction to Environmental Governance What is law?	Aagaard pp. 1-44; Lazarus, Ch. 3	BEFORE class submit Blackboard survey
Jan. 23	Administrative Law and Theory Is federalism antithetical to sustainability?	Aagaard pp. 59-115; Ch. 4 Law of Environmental Protection Treatise	BEFORE class submit answers to questions a, b, and e on pp. 98-99 of Aagaard
Jan. 30	Courts and Access to Justice Are courts and the legal system inherently unjust?	Aagaard pp. 115-158	Community Memo due Feb. 5
	B. Regulating Environmental Impact at Landscape Scale		
Feb. 6	National Environmental Policy Act Does the U.S. have a national environmental ethic, policy, or law?	Aagaard pp. 645-727	
Feb. 13	Understanding Environmental Impact Statements Are EIS's useful or paper exercises or both?	Dakota Access Pipeline Materials	In class exercise: Represent a Party
Feb. 20	Endangered Species Act, Land Use, and Project Development What does U.S. law say about American values regarding land, other species, property rights, and economic development?	Aagaard Ch. 8 p. 729-800	BEFORE class submit on Blackboard your Issue Presentation Topics In class mini-quiz on NEPA, ESA, Land Use, and Project Development Legal Requirements
Feb. 27	Mid-term		
	C. Regulating Products and Pollution		

Class	Class Topic	Readings	Assignments
Mar. 6	Risk, Toxicology, and Product Regulation What is risk?	Stone article; Ch. 16, Law of Environmental Protection Treatise	
Mar. 20	Clean Air Act: Ambient Air, Common Pollutants Is achieving clean air a Sisyphean task?	Aagaard pp. 159-216; Billings & Jorling article	By March 24, Corporate Memo Due
Mar. 27	Clean Air Act: Local Hot Spots, Toxic Pollutants Is regulating toxic air pollutants a waste of time and resources?	Aagaard pp. 216-299	By March 31, submit on Blackboard mini quiz that tests your reading of a Federal Register notice
Apr. 3	Clean Water Act: Point Sources and the Scope of Regulation Why isn't dilution a great solution for water pollution?	Aagaard pp. 299-378; Miller pp. 406-440	
Apr. 10	Clean Water Act: Nonpoint Sources and Saving the Bay Do our laws reflect how we value water?	Aagaard pp. 378-420	By Apr. 13, submit on Blackboard the mini quiz on CWA provisions
Apr. 17	Hazardous Wastes and Sites How is hazardous waste different from toxic pollution different from toxic products?	Aagaard pp. 547-598; 610-631	
	D. Using Law to Address Super Wicked Problems		
Apr. 24	Climate Change Is environmental law the right tool to address climate change?	Glicksman pp. 1212-1300	
TBD	Final Exam		

Policies and Expectations

Attendance & Participation Policy

As a Master's level class, students are expected to participate actively in class. While the professors will present material that is unfamiliar and help guide students through the material, students are active co-teachers by bringing their experiences and expertise to class and by discussing the material, exploring new ideas, and challenging each other on how environmental law works in practice as well as theory.

Please let both Professors McCoy and Schang know via email if you will not be able to attend class. Attendance at all classes is expected, and more than two absences will affect your grade as part of the

Class Assessment policy above. Professor Vithanage will hold office hours Wednesdays from 4-6 pm at her office in the basement of Stuart Hall. Professor Schang is available by appointment by emailing schangs@gwu.edu.

Credit Hours and Work Expectations

Pursuant to University policy, 37.5 hours of work per semester is required for one credit hour. This course is three credit hours and as such will require 112.5 hours of work, divided between direct instruction (class time) and independent learning (completing reading and other assignments).

Time spent in class will be 2.5 hours per week (35 hours total) and time for class preparation will be an Average of about 5 hours per week (78 hours total) with the understanding that some weeks will require more than 5 hours of independent work (when you prepare your case presentation and prepare for the midterm and final exams) and some weeks may require slightly less. Thus, the total hours of work will meet (and likely exceed) the 112.5 hours required.

Academic Integrity

All examinations, papers, and other graded work products and assignments are to be completed in conformance with the [George Washington University Code of Academic Integrity](#). We take any instances of academic dishonesty, including plagiarism, very seriously. In the event of an occurrence of academic dishonesty, the student will be required to meet with both professors in order to assess the severity of the student's actions. The consequences will be determined on a case-by-case basis and may include (but is not limited to) zero credit for an assignment or exam, a grade of "F" in the course, and/or submission of a report to the Academic Integrity Council.

Additional Policies and Information

- Blackboard: Blackboard will be used to communicate with students. Please make sure that you can access the course and that you regularly check whatever email account Blackboard uses for you. If you have problems with Blackboard, contact the Helpdesk at 202-994-5530 or helpdesk.gwu.edu.
- Class Decorum: Texting, side conversations, or using your laptop for anything other than taking notes is an inappropriate use of class time. Those who do these things may think their actions are unobtrusive, but they are actually quite conspicuous. It's distracting both to us and to your classmates, and will result in a significant decrease in your class participation/engagement grade.
- Late Work: Unless you've made arrangements with us in advance, late work will be penalized with a one grade step reduction (e.g. from an A- to a B+) per day.
- Incompletes: A student must consult with the instructors to obtain an "incomplete" before the last day of class. The student and instructors will sign the CCAS contract for incompletes and submit it to the ENRP Director.
- Grades: No grade changes can be made after the conclusion of semester, except for clerical error.
- Syllabus: This syllabus is a guide to the course. Sound educational practice requires flexibility and the instructors may revise content and requirements during the semester.
- English for Academic Purposes Writing Support Program: If English is not your first language, you may wish to take advantage of GW's Writing Support Program which offers free, one on

one service. Visit <http://www.gwu.edu/~gwriter> for details.

- Accommodation for Students with Disabilities: If you need additional time or other accommodation due to a disability, let the instructors know in first week of the class. For accommodation on the basis of disability, you need to provide documentation to the Office of Disability Support Services.
- University Student-Support Resources: Help in addressing academic, social, and personal issues is available 24 hours a day, 7 days a week through the University Counseling Service which can be reached at 202 994 5300.
- University Policy on Religious Holidays: The Faculty Senate has set guidelines pertaining to the observation of religious holidays. These have become university policy and are as follows:
 - that students notify faculty during the first week of the semester of their intention to be absent from class on their day(s) of religious observance.
 - that faculty continue to extend to these students the courtesy of absence without penalty on such occasions, including permission to make up examinations.
 - that faculty who intend to observe a religious holiday arrange at the beginning of the semester to re-schedule missed classes or to make other provisions for their course- related activities.
 - that, prior to each semester, the administration circulate to faculty a schedule of religious holidays most frequently observed by GW students
 - that student members of other religious groups are also entitled to the same courtesies and accommodations.
 - that the administration conveys this policy to students by including it in the Schedule of Classes and other places deemed appropriate.
- University policies may be found here: <https://registrar.gwu.edu/university-policies>.