

School of Environmental and Biological Sciences, Rutgers University

**Environmental Law and Policy 1: Nature, Law and Society**

**11:374:460, Spring 2012**

Monday/Thursday 3rd period (12:35 to 1:55pm)

**Professor:**

Cymie Payne

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Office Hours: Wednesday 2:30-3:30 and by arrangement

**Required Reading:**

PLATER, ABRAMS, GRAHAM, HEINZERLING, WIRTH AND HALL, ENVIRONMENTAL LAW & POLICY (4<sup>th</sup> ed., 2010)

Other assigned readings will be available on the internet or Sakai.

Students will be expected to read a major daily paper (e.g. NY Times, Wall Street Journal, Financial Times) or BNA Environmental Reporter regularly and to participate in the discussion at the beginning of class.

**Prerequisites:** Politics of Environmental Issues 11:374:279

**Purpose**

This course is an introduction to US law and policy governing air, water and other natural resources, species and public health, and the human activities that affect them and are influenced by them. We consider environmental law and policy at local, state, regional and transnational scales, with a primary focus on US federal law statutes: the Clean Air Act, Clean Water Act, National Environmental Policy Act, CERCLA (Superfund) and the Endangered Species Act. These statutes are representative of varied approaches to regulation and students who pursue a range of environmental careers will most likely be working with them.

The class will examine sources of law, including the common law, the US Constitution, legislation, administrative rulemaking, formal and informal law and evolving negotiated and market-based approaches to regulation. You will develop basic skills in legal research, case analysis, statutory interpretation and regulatory design. The course is intended to prepare students entering environmental professions to understand the laws, regulations and court decisions you will encounter; introduce you to related history and regulatory theory; and to introduce you to legal studies

**Learning objectives**

You will develop a basic knowledge of several key federal environmental laws and some knowledge of state and local measures. You will know how law is made and enforced by legislatures, administrative agencies, courts and civil society and you will be able to apply this

knowledge to determine what the governing law is in an area where the law is actively changing. You will be able to find court decisions in free internet databases, analyze a judgment and report on the facts, the law applied by the court, and the judge's ruling (i.e., brief a case). You will learn how to write a comment letter to a government agency. You will develop a basic understanding of regulatory design. You will improve your writing, speaking and listening skills.

### **Basis for Evaluation**

100 points total:

15 pts Class participation: for every class one third of the class will be "on call" to orally brief and discuss the assigned reading; another third of the class will be "on call" to find and present relevant current news items; you are expected to be prepared and to make thoughtful contributions to class discussion when you are not on call. Class attendance is mandatory.

30 pts 3 short written assignments (10 points each) (there will also be two ungraded exercises)

15 pts Midterm Exam

40 pts Final Exam

\*\*\* Any student who wishes to, may revise one of the written assignments in response to my comments and re-submit it for additional comment and feedback to improve their writing skills. It will have no effect on the grade for that assignment or for the course. \*\*\*

→ TOPICS AND ASSIGNMENTS ARE SUBJECT TO CHANGE - CHECK ON SAKAI ←

Class	Date	Topic	Assignment
1	Jan 19	<b>Class introduction, procedures, goals How law is made How to brief cases for class discussion</b>	Chapters 1&2 (read before first class) pages 25-36, 53-65
2	Jan 23	<b>Multi-scalar view of law: local, state (NJ), federal, international jurisdiction Common law: environmental torts Finding the law (citation formats)</b>	Chapter 3 Pages 70-101
3	Jan 26	<b>Common law: causation and remedies Standards of proof, burden of proof</b>	Chapter 3 Pages 101-137 <u>Exercise 1</u> : Finding the law, citation formats (ungraded)
4	Jan 30	<b>Common law: Remedies for Toxic</b>	Chapter 4 Page 139-143, 152-168

## Torts

5	Feb 2	<b>Introduction to regulation Finding and reading statutes</b>	Chapter 5 <u>Exercise 2</u> : Case briefing (ungraded) Pp 185-213
6	Feb 6	<b>The concept of public and private law Constitutional basis for regulation and administrative law APA Rulemaking</b>	Chapter 6 Pp 215-238
7	Feb 9	<b>Administrative Procedures Act Judicial review: standing, agency record</b>	Chapter 6 (cont) Pp 238-266 <u>Exercise 3</u> : finding a bill in THOMAS
8	Feb 13	<b>Federalism: Preemption, dormant commerce clause, cooperative federalism, international agreements in US law</b>	Chapter 7 pp 267-295
9	Feb 16	<b>Public Participation Legislative oversight National Environmental Policy Act (NEPA)</b>	Chapter 8 pp 319-351
10	Feb 20	<b>NEPA: Environmental Review</b> In-class public participation exercise	<u>Exercise 4</u> : citizen comment letter  Reading will be a current EIS provided with the directions for the comment letter
11	Feb 23	<b>Health and Pollution: Clean Air Act – health-based standards, precaution, criteria</b>	Chapter 11 CAA statute and regs Pp 465-498 <i>As you read, pay attention to the regulatory techniques used in the CAA; note the difference in treatment of stationary and mobile sources; and federal-state relations.</i>

<b>pollutants</b>			
12	Feb 27	<b>Health and Pollution: SIPs, NAAQS, PSD, EJ</b>	Chapter 11 CAA statute and regs pp 498-521
13	March 1	<b>Clean Air Act – technology-based standards CAA - Climate change Practice essay questions</b>	Review CAA; p. 497, note 3: think this through for discussion in class, focusing on the LAER and BAT standards Look at the Summary of the Final Mercury Rule
14	March 5	<b>Exam 1</b>	Review
15	March 8	<b>Biodiversity, Endangered Species Act</b>	<ol style="list-style-type: none"> <li>1) Pillsbury Client Alert: New Ruling Highlights Split on Strict Liability for Incidental “Taking” of Migratory Species (30 Jan 2012) [SAKAI]</li> <li>2) Chapter 10 – Roadblock Statutory Strategies &amp; The Endangered Species Act: <ul style="list-style-type: none"> <li>– pp 427-433; ESA §§4, 7, 9 and 10</li> <li>– pp 434-440, how ESA and MBTA balance competing interests such as enforceability, flexibility, and effectiveness?</li> <li>– pp 443-446 (§10, distinction between the ESA statute and its implementing regulations)</li> <li>– pp 446-457, 459-461, adjustments to the ESA in recent years</li> </ul> </li> </ol>
<b>BREAK</b>			
16	March 19	<b>Water pollution: Clean Water Act – Point Sources, TBELs &amp; Cooperative Federalism</b>	Chapter 12 p. 569-570 – Read the Average River: we will refer to it throughout this section Pp 523-551 (skip comment 4, pp 534-536, which we cover in class 18) - Understand the basic mechanics of the CWA, including state and federal roles and point/nonpoint source distinction - Read comments 1-3, pp 531-534 and identify the pros and cons of technology-based standards for water pollutants; if you were a state official responsible for providing swimmable, fishable, drinkable water to your citizens, and answerable to the governor’s concern about the state’s economy, what type of controls would you choose? - Useful tool, if you are having trouble understanding how the CWA works: <a href="http://epa.gov/owow/watershed/wacademy/acad2000/cwa/index.htm">http://epa.gov/owow/watershed/wacademy/acad2000/cwa/index.htm</a>
17	March 22	<b>Water pollution: Clean Water Act – Water Quality-Based Approach &amp; Nonpoint Sources</b>	Chapter 12 (cont) pp. 551-569 - How does CWA regulation of nonpoint source pollutants differ from the point source regime? pp. 357-360 - Note how the SDWA differs from the CWA in its approach

Safe Drinking Water Act			
18	March 26	<b>Wetlands protection</b>	- pp 534-536 comment 4, for the meaning of “navigable waters,” a widely used term with legal meaning in other contexts; then read the discussion of the <i>Rapanos</i> and <i>SWANCC</i> cases for the justices’ different approaches to defining it. - pp 368-74
19	March 29	<b>Water pollution: Cleaning It Up</b>	China or FERC events or Cayuhoga DVD Short blog
20	April 2	<b>Cost Benefit Analysis in Agency Rulemaking and Review of Regulations</b>	Pp 571-605 Think about the following: What is the value of a human life? Who should decide what that value is? What is the worth of the future compared to the present?
21	April 5	<b>Energy: Offshore Oil regulation</b>	Oil Pollution Act – read definitions section [Sakai] JL Ramseur, <i>Oil Spills in U.S. Coastal Waters: Background and Governance</i> (CRS, Jan 11, 2012) [Sakai] Be prepared to answer these questions: Who will pay for damage to marine fauna in the Gulf of Mexico from the Deepwater Horizon oil spill? How will the cost of damage to natural resources be calculated? What statue(s) address oil spills in the Gulf of Mexico? What regulatory strategies do you recommend to address oil spills and why?
22	April 9	<b>CERCLA</b>	Chapter 16 pp 679-720
23	April 12	<b>CERCLA</b>	Handout: Updating the law Chapter 16 pp 720-741, Chapter 18 pp 789-96 (Brownfields)
24	April 16	<b>RCRA</b>	Chapter 17 pp 743-772
25	April 19	<b>Public Trust Doctrine</b>	pp 857-877 <u>Exercise 5</u> : Real estate developer’s checklist
26	April 23	<b>Enforcement: criminal</b>	David Uhlmann, <i>After the Spill is Gone: The Gulf of Mexico, Environmental Crime and the Criminal Law</i> [Sakai] and Chapter 18. pp 788-89, comment 4 (calculating <u>civil</u> penalties)
27	April 26	<b>Environmental Enforcement: Civil</b>	Chapter 18, pp 775-784, 799-805
28	April 30 May 3	<b>Review session Final Exam</b>	No assigned reading 8am-11am