

ENVS 60
Environmental Law
Fall 2013
Class Location: Life Sciences Center 205
Class Meeting time: 10 (10:00 – 11:05 am, M, W, F)
X-hour, 12:00-12:50, Th

Instructor Ross Jones
Office: Fairchild 110A
Email: ross.t.jones@dartmouth.edu
Office phone: 603-646-0261
Office hours: Thursday, 1:00-3:00pm – or by appointment

Textbooks & Other Readings

- Required:** **Environmental Law (8th ed.), 2014, by Nancy Kubasek & Gary Silverman.**
This textbook provides an overview into the purposes of environmental law in general, as well as a survey of the contents and purpose of specific federal and international environmental laws. You should use it for background and as a reference for the topics that we will discuss
- Optional:** **Law and Ecology: The Rise of the Ecosystem Regime, 2002, by Brooks, Jones, and Virginia.** This book analyzes the history of environmental law with a particular emphasis of how ecology became a more important part of environmental law over time.

Additional Readings (articles, cases, statutes) will be posted on Blackboard as needed. **Additional course readings will be assigned throughout the quarter** - some will be required readings and others will be optional. Copies of these materials will be posted on the class Blackboard web site as needed. In addition, all statutes, legal cases, and law review articles that we will use are available for free download via the Dartmouth Network from Academic LexisNexis (Dartmouth Library website/eResources/Law).

Description of the Course

Environmental law aims to protect and enhance the environment, reduce the risk to human health from pollution, and achieve sustainable development of natural resources. The success of environmental law depends upon balancing the three components of sustainability: ecological, economic, and social/cultural. Today, the primary sources of this balancing act are federal, state, and local ordinances and their myriad regulations. However, these statutes and regulations overlay a common, judge-made, law that establishes a system of private and public property, a law of contracts that governs transactions, and a tort law that provides remedies for intentional and unintentional harms. In addition, there is a growing body of international environmental law with both similarities and differences to U.S. environmental law. The major objectives of this course are:

1. To survey today's major environmental laws,
2. Explore the history of environmental law and policy,
3. Determine how well environmental law balances ecological, economic, and social sustainability and,
4. To discuss how to improve environmental law to better deal with biodiversity loss, human population growth, energy needs, and climate change in the future.

Grades

Grades will be based on:

- 25% Take home Mid-term exam
- 25% Take home Final exam (cumulative)
- 10% Case Brief (1,250 word limit)
- 15% Legal Brief (1,250 word limit for Argument Section)
- 15% Group project – e.g., class presentation, mock trial, mock legal argument (20-30 minute in-class presentation)
- 10% Individual participation in class and on course's online discussion board

- The **take-home exams** will consist mostly of several hypothetical environmental issues/problems which you will analyze, using the material studied in the first part of the class (for mid-term exam) and entire class (final exam).
- The **case brief** is intended to encourage you to learn how to read and understand the parts of a legal document (e.g. a judicial opinion) in which you will summarize: the facts of the case, the key issue(s) being considered, the reasoning used, the legal rules applied, and the final conclusion (holding) of the case.
- The **legal brief** is intended to encourage you to learn how to analyze and write like a lawyer/advocate – carefully constructing a legal argument through the persuasive application of relevant laws and policies.

Note: Instructions and examples of both kinds of briefs will be posted on Blackboard. In addition, we will discuss both types of briefs in class.

- The **group project** will be determined by discussion between the group(s) and instructor and may, for example, consist of a film documentary of a local environmental issue, a mock trial, oral argument before the U.S. Supreme Court, or an administrative hearing. **Note: I will form groups within first two weeks of term.**
- **Individual participation** – Willingness to participate in and express one's own informed opinions during in-class discussions will be valued over the ability to repeat what is in book. In addition, we will use our course's Blackboard discussion board to build upon and extend class discussion. Participation in both in-class and online forums will be counted in participation grade.

Students with disabilities. I encourage students with disabilities to make an appointment with me during the first week of the term to discuss appropriate accommodations that might be helpful. Also, visit the Academic Skills Center in 301 Collis to register for support services.

Honor Principle. This course is conducted under the principles of the Dartmouth College Academic Honor Principle. See:

<http://dartmouth.smartcatalogiq.com/2012/orc/Regulations/Undergraduate-Study/Academic-Honor.aspx>

X-hour. We will use X-hours for required make-up classes **if** needed to remain on schedule. Additional X-hours will be used for **optional** discussions/review sessions or for meeting with groups to discuss projects. All other X-hour periods will be used as additional office hours.

CLASS SCHEDULE (09/11/2013 Version - Subject to Change)

Topic & Readings

(Notes: 1. All readings are **required** unless otherwise noted, 2. Additional and/or Replacement Readings may be added through the term, announced in class, and added to Blackboard; 3. Page numbers for Environmental Law textbook are for 8th edition)

Introduction

The purpose of the first five classes will be to explore; 1) the reasons for environmental laws, 2) the history and foundations of environmental laws, and 3) the tools/approaches of environmental laws.

M 9/16 Overview of course/Why do we have environmental law? Who should write and implement environmental laws?

Example #1 – Who best to regulate greenhouse gas emissions – Congress or the President?

Reading: New York Times Article (June 25, 2013) (optional: review President Obama’s “Climate Action Plan” – link available in article) - Obama puts legacy at stake with clean-air act

<http://www.nytimes.com/2013/06/26/science/earth/clean-air-act-reinterpreted-would-focus-on-flexibility-and-state-level-efforts.html?pagewanted=all>

Example #2 – When is an “endangered” species no longer endangered?

Reading: NY Times Article (June 7, 2013) – Federal protection of gray wolves may be lifted agency says

<http://www.nytimes.com/2013/06/08/science/earth/gray-wolves-no-longer-need-federal-protection-obama-administration-says.html>

Example #3 – Should states be allowed to balance environmental protection and economic development?

Reading: NY Times Article (September 10, 2013) – California takes steps to ease landmark law protecting the environment

<http://www.nytimes.com/2013/09/11/us/california-takes-steps-to-ease-landmark-law-protecting-environment.html?ref=science>

Background Reading: *Law & Ecology*, Chapter 1 (PDF on Blackboard – useful overview) & *Environmental Law*, Chapter 2 (this will also serve as background for legal brief assignment).

W 9/18 Sources of environmental law – history

Reading:

1. *Environmental Law*, Chapter 1

2. *Law & Ecology*, Chapter 2 (PDF on Blackboard)

F 9/20 Sources of environmental law – history continued & types of laws

Readings: *Law & Ecology*, Chapter 3 (PDF on Blackboard)

M 9/23 Administrative & Regulatory Law

Readings: *Environmental Law*, Chapter 3 & Chapter 4 (pp. 117-135)

W 9/25 Environmental Assessment & NEPA – an Introduction

Readings:

1. (Textbook) *Environmental Law*, Chapter 4 (pp. 135-152);

2. (Case) *Calvert Cliffs Coordinating Committee v. United States Atomic Energy Commission* (**Blackboard**);

3. Additional Reading **TBA**

Pollution law

Many of the most well known environmental laws focus on regulating pollution in general and pollution within a specific media (e.g., air or water) in particular. In this section we will learn the basics of the laws dealing with the regulation of air and water pollution, as well as the primary motivation (e.g., human health) for the creation of these laws.

Air Pollution

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| F | 9/27 | Air Pollution - Part 1: Approaches to regulating air pollution
<u>Readings:</u>
1. (Textbook) <i>Environmental Law</i> , Chapter 5
2. Additional Reading TBA |
| M | 9/30 | Air Pollution - Part 2: The Clean Air Act – Key Mechanisms in detail
<u>Readings:</u>
1. (Case) <i>Lead Industries Association v. EPA</i> (Blackboard)
2. (Statute): Selected sections from Clean Air Act (Blackboard) |
| W | 10/2 | Air Pollution - Part 3: Post 1990 (Acid Rain, Ozone, and Climate Change)
<u>Readings:</u>
1. (Case): <i>Alliance for Clean Coal v. Bayh</i> (Blackboard)
2. (Statute): Additional sections from Clean Air Act (Blackboard) |

****Note: Case Brief due on Friday, October 4**

Water Pollution

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|---|------|---|
| F | 10/4 | Water Pollution - Part 1: Types of pollutants, sources, and approaches
<u>Readings:</u>
1. (Textbook) <i>Environmental Law</i> , Chapter 6 |
| M | 10/7 | Water Pollution – Part 2: Clean Water Act – Key mechanisms and comparisons with CAA
<u>Readings:</u>
1. (Statute) Selected sections from Clean Water Act
2. (Article) <i>Assessing the US Clean Water Act 303(d) listing process for determining impairment of a waterbody</i> , Jr. of Environmental Management 86 (2008) 699-711 (Blackboard)
3. (Article) <i>Achieving sustainable development: a review of the environmental balancing act in two key clean water act regulatory programs</i> , Environmental Science & Policy 3 (2000) xv-xx. (Blackboard) |
| W | 10/9 | Water Pollution – Case Study: Vermont Yankee & the Connecticut River
<u>Readings:</u>
1. (Case) <i>Entergy Corp. v. Riverkeeper, inc.</i> , 129 S.Ct. 1498 (2009) (Blackboard)
2. (Legal briefs) Excerpts from various legal briefs associated with Vermont Yankee case will be posted on Blackboard |

Regulating Risk

Our modern industrial society is marked by an ability to produce a large number of products and a copious amount of food. However, with this production come negative side effects, including the production of large amounts of waste and toxic substances. In this section we will learn about how environmental law deals with risk management; particularly as it relates to the regulation of toxic materials.

F 10/11 Regulating Toxic Substances

Readings:

1. (Textbook) *Environmental Law*, Chapter 7

M 10/14 Waste Management & CERCLA

Reading (textbook): *Environmental Law*, Chapter 8

Reading (case): *Burlington Northern & Santa Fe Railway Co. v. United States*, 129 S.Ct. 1870 (2009) (**Blackboard**)

W 10/16 Mock CERCLA Negotiation

****_Mid-term Exam distributed (via email & Blackboard) on Wednesday, October 16 by 12:00pm**

F 10/18 – No Class: Mid-term due by Friday, October 18 by 4:00 PM - My preference is for you to email it to me as an attachment (MS Word, Apple Pages, or PDF). However, if you prefer, you can turn a hard copy into the ENVIS office (Steele 113) by 4:00 PM on Friday, Oct. 18.

Conserving and Protecting Natural Resources

Some of the most contentious environmental disputes have involved deciding what are the individual and social responsibilities towards protecting other species and natural ecosystems. We will spend the next several classes learning about the basic components of major environmental laws dealing with the protection of natural resources and species – on private and public property.

Regulating Private Lands - Land Use Regulation & Regulatory Takings

M 10/21 Regulatory Takings

1. Reading (case): *Lucas v. South Carolina Coastal Council* (**Blackboard**)

2. Reading (journal article): History of Taking (**Blackboard**)

Regulating Public & Common Property – Natural Resource Management

W 10/23 Regulating & Managing Natural Resources – Forests, Rangelands, and Fisheries

Readings:

1. (Textbook): *Environmental Law*, Chapter 10 (pp. 349 – 366)

2. (Book Excerpts) *Law and Ecology*, Chapter 6 (pp. 203 – 215) & Chapter 9 (pp. 295 – 313) (**PDFs on Blackboard**)

Regulating Public & Common Property – Natural Resource Management (continued)

- F 10/25 Regulating & Managing Natural Resources – applying the laws
Readings:
1. (Statutes & Regulations): Selected sections from the National Forest Management Act of 1976 and the Magnuson-Stevens Act of 1976 & Sustainable Fishery Act of 1996; along with representative regulations (**Blackboard**)
2. (Article) **TBA**
- M 10/28 Case Study - Ecological Sustainability and Public Forest Management
Readings:
1. (Case): *Sierra Club v. Marita* (7th Circuit opinion) (**Blackboard**)
2. (Article): Walter Kuhlmann, *Defining the Role of Conservation Biology in the Law of Protecting Ecosystems*, in ENVIRONMENTAL POLICY AND BIODIVERSITY 209, 218 (1994). (**Blackboard**)
3. Optional Readings (cases): *Sierra Club v. Marita* (District Court opinions) (**Blackboard**)
- W 10/30 Agriculture & Environmental Law
Reading:
1. (Article) J.B.Ruhl, *Farms, Their Environmental Harms, and Environmental Law*, Ecology Law Quarterly, 27:263 (2000).

Protecting Biodiversity – the Endangered Species Act (ESA)

- F 11/1 The ESA – Statutory & Regulatory Mechanisms
Readings:
1. (Textbook): *Environmental Law*, Chapter 10 (pp. 367-378);
2. *Law & Ecology*, Chapter 6 (pp. 193 – 202) & Chapter 9 (pp. 286 – 295) – (**PDFs on Blackboard**)
3. (Statute): excerpts from the ESA (**Blackboard**)
- M 11/4 The ESA – (the cases & the future)
Readings:
1. (Case): *Babbitt v. Sweet Home* (**Blackboard**)
2. (Article): Keeping it Relevant (2009) – **Blackboard**

****Note: Legal Brief due on Wednesday, November 6** (Read Chapter 2 in *Environmental Law* as part of brief preparation)**

- W 11/6 Balancing Biodiversity protection & Economic Development – Habitat Conservation Plans (HCPs)
Readings: (journal articles): HCPs – from the science perspective; HCPs – from the landowner perspective (**Blackboard**)

Integrating Environmental Laws

Starting in the late 1970s, concern about high profile environmental damage to many natural and human dominated ecosystems (through human economic activities) led to many environmental laws (both old and new) taking on a more place-based concern; in which ways were found to link normally separate environmental laws or specific environmental laws were written to regulate human actions in specific types of environments. Many of these examples involve the integration of pollution and natural resource laws, as well as laws at different levels of government – e.g., state and federal – and fall under the relatively new term, ecosystem management.

- F 11/8 Ecosystem Management – Case Studies (Florida Everglades, Chesapeake Bay, Lake Tahoe)
Readings:
1. (Book Excerpt): *Law & Ecology*, Chapter 8 (**PDF on Blackboard**)
2. Additional Readings: **TBA**

International Environmental Law – An Introduction

From climate change to the global biodiversity crisis, many major environmental problems today are global in scope. For the next three classes we will compare and contrast the structure and content of some major international environmental laws. We will focus on how international laws are developed and how they are similar (and different) to American environmental laws.

- M 11/11 The Structure of International Environmental Law/International Biodiversity Protection
Readings:
1. (Textbook) *Environmental Law*, Chapter 11 (pp.379-392)
2. (Article) William J. Snape, III, *Joining the Convention on Biological Diversity*, Sustainable Development Law & Policy, Spring 2010 (**Blackboard**)
3. (Article) Melissa Blue Sky, *Getting on the List: Politics and Procedural Maneuvering in CITES Appendix I*, Sustainable Development Law & Policy, Spring 2010 (**Blackboard**)
- W 11/13 Global Change Regulation (Ozone, Greenhouse gases, and other international issues)
Reading:
1. (Textbook) *Environmental Law*, Chapter 11 (pp. 392 – 418)
2. **Additional Reading TBA**

Energy, Population & the Law

- Th 11/14 Energy and Population Growth
Reading (textbook): *Environmental Law*, Chapter 9

Group Presentations - Material from presentations will be covered in final exam. Each presentation will be approximately 30 minutes per group

- F 11/15 Groups 1 and 2
M 11/18 Groups 3 and 4

Final Exam will be distributed (via email & Blackboard) at beginning of Final Exam period and will be due at 12:00pm of final day of Final Exam period.