

**ENSP 330: Introduction to Environmental Law
Fall 2012**

T/Th 9:30 p.m. – 10:45 p.m.
Susquehanna Room 1117

Syllabus

Instructor:

Joanna Goger, Lecturer, Environmental Science and Policy Program
Room 0218 Symons Hall
Phone: 301-405-4104
E-mail: jgoger@umd.edu

Office Hours: By appointment on Tuesdays, Wednesdays, and Thursdays

Course overview and objectives:

This course is designed to provide students with an overview of environmental law – from its common law roots to its current role in the modern regulatory state. The course will begin with a brief overview of the U.S. legal system generally in order to provide a framework for understanding the case law and statutory law presented throughout the course. The course will then examine the roots of environmental law - from its beginnings in the common law to the dawn of the environmental movement in the 1970s.

The environmental regulatory structure will then be placed in context through a discussion of the role of agencies and the courts. Once these background principles have been established, the course will provide an introduction to some of the major federal environmental statutes that seek to control pollution and protect natural resources including the Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act (the “Superfund Program”), Clean Air Act, Clean Water Act, Endangered Species Act, and National Environmental Policy Act. The course will also explore the concept of civil and criminal enforcement of these laws, and the important role that citizens play in the enforcement process.

The course will conclude with an introduction to international environmental law, with particular emphasis on the role of the “sustainability” concept in international environmental law. Students will consider outcomes of the June 2012 Rio + 20 United Nations Conference on Sustainable Development conference as they relate to sustainability and will conduct a comparative analysis of the use of the sustainability concept in U.S. and foreign law. The exploration of “sustainability” in this course supports the Chesapeake Project, an initiative of the Office of Sustainability at the University of Maryland.

Goals and learning outcomes of the course include: familiarizing students with the role of case law in environmental law, introducing students to concepts and techniques likely to be used in law school and beyond, and providing students with a substantive knowledge of

environmental law.

Required Course Materials:

PERCIVAL, SCHROEDER, MILLER & LEAPE, ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY (Aspen, 6th ed. 2009). (ISBN 13: 978-0-7355-8462-4)

Lazarus and Houck, eds. Environmental Law Stories (Foundation Press, 2005) (ISBN 1-58778-728-8).

Other materials will be available through the ELMS Blackboard System, <http://elms.umd.edu/> at the Course Reserves and Course Documents tabs and on the internet at web links provided on the readings table below. Materials on ELMS will be marked “ELMS.”

Class preparation:

The readings will be a primary topic of discussion during class, so students should come prepared to discuss the assigned readings. This course will require an average of 6-9 hours of out-of-class reading, research and/or writing each week. As you read, take your time, and read twice if necessary. Focus your attention on the cases and introductory material. You may skim the notes and questions after the cases unless I tell you specifically to focus on a particular note. Students will occasionally be assigned Problem Exercises in advance of class. Student groups will discuss the Exercises and will be responsible for reporting their findings and conclusions to the rest of class. The assigned readings will help students to be prepared for these exercises.

E-mail List/ELMS: An e-mail list will be set up for this class through the ELMS/Blackboard System. E-mail addresses are pulled from the University Directory listing. Please be sure that your preferred and current e-mail address is listed in the Directory. You can check and update this information by going to Testudo (www.testudo.umd.edu/apps/saddr/). I will be posting course documents and information on the ELMS/Blackboard system, so it is important that you use this system and that you are checking your e-mail for any announcements or assignments. In particular, you will find materials in the Course Documents section of Blackboard, as well as Course Reserves. **Please note that I will communicate with the class through e-mail and ELMS regarding any class cancellations, changes in meeting times, or room changes.**

Grading:

The course is organized in a seminar format, with lectures supplemented by student discussion of assigned readings and in-class problem exercises. Major Scheduled Grading Events are as follows: there will be one mid-term exam on **Tuesday, October 16** (30% of your final grade = 300 points), a final exam on **TBA from 1:30 p.m. to 3:30 p.m.** (30% of your final grade = 300 points), and a paper/presentation assignment (30% of your final grade = 300 points) (see Paper and Presentation below). Student participation will also be included in the final grade (10% of your final grade = 100 points) and includes participation in in-class discussion and exercises (50 points) and completion of 2 short homework assignments (25 points each). Your total grade will be out of 1,000 points. Homework assignments must be submitted in **HARD COPY** and unless you see me in advance of the due date and obtain an approved excuse, 5 percent of the total possible points will be deducted from your score for every day the homework is late, including weekend days.

Your total grade will be out of 1,000 points. You may calculate your percentage grade at any time during the semester by dividing the number of points earned by the number of points possible at that point in the semester. Please see me if you have any questions.

If you would like to **appeal any grade** that you have received in this course, you may file an appeal within one week of the return of the assignment. Please submit the entire exam, homework, or paper and attach a typed explanation of the reason why you think your grade should be changed.

Paper and Presentation:

Papers will be due at the beginning of class on **Tuesday, November 27**. Unless you see me in advance of the due date and obtain an approved excuse, 5 percent of the total possible points will be deducted from your score for every day the paper is late, including weekend days. (So, for example, on a 100-point scale, a student who would have earned a 94 on a timely paper will earn 89 if the same paper is turned in one date late, 84 if turned in 2 days late, etc.). All papers must be turned in to me in **HARD COPY**. I will not accept electronic submissions. Group presentations will take place on **Thursday Nov 29, Tuesday Dec 4, and Thursday Dec 6**.

This assignment will involve each student in an analysis and discussion of a current issue in environmental law. Students will have the opportunity to choose from a list of topics related to an issue of current environmental significance. There will be 3-4 students assigned to each of the topics. Each student will work individually on researching and writing a paper on the topic. Each topic group of 3-4 students will then work together on a group presentation. Further details about this assignment will be provided in class.

Homework:

Students will complete a case outline at the beginning of the course which will be worth 25

points. At the end of the semester, students will complete a short writing assignment in which they will be tasked with explicitly incorporating the concept of “sustainability” in U.S. or international environmental law. This assignment will also be worth 25 points. More details about each of these assignments will be forthcoming.

Attendance and Absences:

In general:

In accordance with University policy, students are expected to attend classes regularly, and on-time. Attendance will not be taken on a regular basis, but failure to attend class is likely to impact your grade, as the lecture materials will be a primary source of exam material AND because you will be graded based on your participation in IN-CLASS discussions and exercises. Please do your best to attend class on a regular basis. It is the best way to learn and understand the material, and gives you the opportunity to ask questions about material you may not understand. This course in particular depends in significant part on the active participation of students in discussion of cases and in-class discussion exercises.

An absence will only be considered “excused” under the circumstances described by the University’s attendance policy, available at: <http://www.testudo.umd.edu/soc/atedasse.html>. In summary, it is the policy of the University to excuse the absences of students that result from the following causes: illness of the student, or illness of a dependent as defined by Board of Regents policy on family and medical leave; religious observance (where the nature of the observance prevents the student from being present during the class period); participation in university activities at the request of University authorities; and compelling circumstance beyond the student's control. **Students claiming an excused absence must (1) apply in writing and (2) furnish documentary support for their assertion that absence resulted from one of these causes.**

Illness:

The University will accept as an excused absence a self-signed note from a student who has missed a single lecture, recitation, or laboratory, attesting to the date of the illness. The note must also contain an acknowledgement by the student that the information is true and correct and that providing false information is prohibited under Code of Student Conduct. The student is also obligated to make a reasonable attempt to inform the instructor of his/her illness in advance. For non-consecutive, medically necessitated absences from more than a single lecture, recitation, or laboratory, I will follow the same policy. If absences become frequent, I will require further documentation from the Health Center or an outside Health Care Provider.

A student experiencing a prolonged absence from class or a student who will be absent for a Major Scheduled Grading Event shall be required to provide written documentation of the illness from the Health Center or from an outside health care provider. In cases where written verification is provided, the Health Center or outside health care provider shall verify dates of treatment and indicate the time frame that the student was unable to meet academic responsibilities. No diagnostic information shall be given. For further information on this policy, please see <http://www.president.umd.edu/policies/v100g.html>.

Academic Accommodations:

If you have a documented disability, please contact Disability Support Services 0126 Shoemaker Hall to apply to DSS for accommodation request forms which you can provide to me (and your other instructors) as proof of your eligibility for accommodations. The rules for eligibility and the types of accommodations a student may request can be reviewed on the DSS website at <http://www.counseling.umd.edu/DSS>. Please submit your paperwork to me as soon as possible and well before any due date or exam to ensure that any accommodation needs can be satisfied.

Religious Observances:

The University System of Maryland policy provides that students should not be penalized because of observances of their religious beliefs. Students shall be given an opportunity, whenever feasible, to make up within a reasonable time any academic assignment that is missed due to individual participation in religious observances. *It is the responsibility of the student to inform the instructor of any intended absences for religious observances in advance.* Notice should be provided as soon as possible but no later than the end of the schedule adjustment (drop/add) period (**February 7, 2012**).

Code of Academic Integrity:

Academic dishonesty (such as cheating on exams, plagiarism from the internet or other students, submitting the same paper for credit in two courses without authorization, buying papers, submitting fraudulent documents and forging signatures) is unacceptable and will result in referral to the Student Honor Council after which a determination of a violation will result in a failing grade in the course and a note on your transcript indicating a violation of the rules of academic integrity. The University's Code of Academic Integrity sets standards for academic integrity at Maryland for all undergraduate and graduate students. As a student, you are responsible for upholding these standards for this course:

1. No cheating ("intentionally using or attempting to use unauthorized materials, information, or study aids in any academic exercise");
2. No fabrication ("intentional and unauthorized falsification or invention of any information or citation in an academic exercise");
3. No facilitating academic dishonesty ("intentionally or knowingly helping or attempting to help another to violate any provision of this Code");
4. No plagiarism ("intentionally or knowingly representing the words or ideas of another as one's own in any academic exercise").

Please see me if anything about these rules is unclear, or for more information on the Code of Academic Integrity or the Student Honor Council, visit www.shc.umd.edu.

Copyright Protection for Class Materials

Commercial firms have been paying students to take notes and collect course materials, which are then copied and sold. Course materials that exist in a tangible medium, such as written or recorded lectures, Power Point presentations, handouts and tests, are copyright protected. Students **may not** copy and distribute such materials except for personal use and with the

instructor's permission.

Course Evaluation

Your participation in the evaluation of courses through CourseEvalUM is a responsibility you hold as a student member of our academic community. Your feedback is confidential and important to the improvement of teaching and learning at the University as well as to the tenure and promotion process. CourseEvalUM can be accessed at this website:

www.courseevalum.umd.edu. By completing all of your evaluations each semester, you will have the privilege of accessing the evaluation reports for the thousands of courses.

Week #	Date	Topic	Reading (to be completed <i>before</i> today's class)	Activities, Assignments and Guest Lecturers
1	Thurs. 8/30	Intro to the Course, Review of the Syllabus, Intro to the U.S. Legal System	None	
2	Tues. 9/4	Intro to Environmental Problems/U.S. Legal System	PERCIVAL, ENVIRONMENTAL REGULATION, pp. 1-8, 15-18, 24-25. Breyer, Making our Democracy Work, Appendix B, pp. 228-232 (ELMS); The Constitution, http://www.archives.gov/exhibits/charters/constitution_transcript.html	<u>In-Class Discussion Exercise:</u> Mercury Contamination p. 24-25, Questions One and Two.
	Thurs. 9/6	Common Law Roots of Environmental Law	PERCIVAL, ENVIRONMENTAL REGULATION, pp. 61-84.	Case Brief Assignment Handed Out
3	Tues. 9/11	Regulatory Legislation in Historical Perspective	PERCIVAL, ENVIRONMENTAL REGULATION, pp. 88-99 Breyer, Chapter 8, pp. 88-105 (ELMS)	
	Thurs. 9/13	Structural Overview of Environmental Law: Standing to Sue	PERCIVAL, ENVIRONMENTAL REGULATION, pp. 104-115	<u>In-Class Standing Exercise</u>
4	Tues. 9/18	The Commerce Clause	PERCIVAL, ENVIRONMENTAL REGULATION, pp. 125-129, 957-964.	<u>In-Class Commerce Clause Exercise</u>
	Thurs. 9/20	Judicial Review and the Regulatory Process	PERCIVAL, ENVIRONMENTAL REGULATION, pp.159-165, 173-180 Breyer, Chapter 9, pp. 106-120 (ELMS)	
5	Tues. 9/25	An Overview of Current and Future Regulatory Challenges	Red Tape Rising: Obama's Torrent of New Regulation, Heritage Foundation, October 26, 2010 (ELMS) Lisa Jackson/EPA Letter re: CAA and Job Creation and Economic Growth, February 8, 2011 (ELMS) Rena Steinzor Testimony, Hearing on Environmental Regs, the Economy and Jobs, February 15 2011 (ELMS)	Guest Lecturer: Rena Steinzor, Professor, University of Maryland School of Law; and President, Center for Progressive Reform. Case Brief Assignment Due
	Thurs. 9/27	Waste Management and Pollution Prevention – RCRA	PERCIVAL, ENVIRONMENTAL REGULATION, pp. 344-354 (skim), 354-366, Coal Ash Notice of Intent to Sue, http://www.psr.org/assets/pdfs/notice-of-intent-to-sue-epa.pdf	**Paper & Presentation Assignment Distributed and Explained

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6	Tues. 10/2	Waste Management and Pollution Prevention – CERCLA (Superfund)	PERCIVAL, ENVIRONMENTAL REGULATION, pp. 393-398 (skim), 401-408, 418-425	** Paper & Presentation Topic/Group Preferences (if any) DUE to me by e-mail
	Thurs. 10/4	Water Pollution Control: Clean Water Act	PERCIVAL, ENVIRONMENTAL REGULATION, pp. 647-648, 670-671, 690-696, 739-740, Complaint, American Farm Bureau v. EPA, http://www.hometownannapolis.com/photos/110111afbf_co_mplaint.pdf	**Paper & Presentation Topics Assigned
7	Tues. 10/9	Water Pollution Control: Clean Water Act	PERCIVAL, ENVIRONMENTAL REGULATION, pp. 652-670, 749-751; EPA Draft Guidance on Waters of the U.S., http://water.epa.gov/lawsregs/guidance/wetlands/upload/wo_us_guidance_4-2011.pdf ; Sackett review, http://www.eswr.com/2012/01/sacketts-likely-to-win-supreme-court-case-law-profs-say/	<u>In-Class Problem Exercise:</u> TBA
	Thurs. 10/11	Air Pollution Control – Clean Air Act	PERCIVAL, ENVIRONMENTAL REGULATION, pp. 499-508 (skim), 551-553, 559-567, Mercury Air Toxics and Legal Challenges, TBA Review for Mid-term	
8	Tues. 10/16	MIDTERM EXAM – MAJOR SCHEDULED GRADING EVENT		
	Thurs. 10/18	Clean Air Act – Climate Change	PERCIVAL, ENVIRONMENTAL REGULATION, pp. 508-517, 546-551, <i>AEP v. Connecticut (ELMS)</i>	

Week #	Date	Topic	Reading (to be completed <i>before</i> today's class)	Activities, Assignments and Guest Lecturers
9	Tues. 10/23	Intro to Legal Research, Legal Writing and Research, Meet with Presentation Groups	None, CLASS WILL MEET IN 6107 McKeldin Library	Guest Lecturer: Judy Markowitz, Government and Politics Librarian, University of Maryland Libraries Library Research Assignment Handed Out
	Thurs. 10/25	Clean Air Act and Climate Change, Paper and Presentation explained	Review Readings from 3/15, Review Introduction to Basic Legal Citation, http://www.law.cornell.edu/citation/	
10	Tues. 10/30	Environmental Assessment: The National Environmental Policy Act	PERCIVAL, ENVIRONMENTAL REGULATION, pp. 857-872, 892-897; <i>Winter v. Natural Resources Defense Council</i> , 129 S.Ct. 365 (2008) (ELMS)	
	Thurs. 11/1	Protection of Biodiversity – The Endangered Species Act	PERCIVAL, ENVIRONMENTAL REGULATION, pp. 940-949, 990-998, additional readings TBA	Guest Lecture, Kristen Floom, Trial Attorney, Department of Justice, Environment and Natural Resources Division
11	Tues. 11/6	Citizen Suits and Civil Enforcement	PERCIVAL, ENVIRONMENTAL REGULATION, pp. 1011-1029.	<u>In-Class Discussion Exercise:</u> Calculating a Civil Penalty Library Research Assignment Due
	Thurs. 11/8	Criminal Enforcement	Barrett, Jane F., W. Warren Hamel, and Steven P. Solow, ABA, Environmental Litigation: Law and Strategy, Chapter 2, Environmental Criminal Enforcement, pp. 1-27 (ELMS)	Guest Lecture, Warren Hamel, Partner, Venable LLP
12	Tues. 11/13	International Environmental Law	Chapter 3, Environmental Protection in the Twenty-first Century: The Role of International Law, pp. 55-66, in Axelrod et. al. eds, The Global Environment: Institutions, Law, and Policy, 3ed (2011) (ELMS). The Future We Want – RIO +20 Outcome Document, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/381/64/PDF/N1238164.pdf?OpenElement	

	Thurs. 11/15	Comparative Analysis of Sustainable Development	Michael P. Healy, "The Sustainable Development Principle in United States Law," <i>Journal of Energy and Environmental Law</i> , Summer 2011, pp. 19-41; TBA from Italy Environment Code (ELMS)	<u>In Class Exercise</u> : Unlawful to be "Unsustainable"?
13	Tues. 11/20	Constitutional Restrictions on Land Use Regulation	PERCIVAL, <i>et al.</i> , ENVIRONMENTAL REGULATION, pp. 793-810	Sustainability paper due
	Thurs. 4/22	Thanksgiving - NO CLASS	None	
14	Tues. 11/27	MAJOR SCHEDULED GRADING EVENT – PAPERS DUE Student presentations on papers	Group readings to be posted on ELMS	Post readings on ELMS ALL PAPERS DUE!
	Thurs. 11/29	Student presentations on papers	Group readings to be posted on ELMS	Post readings on ELMS
15	Tues. 12/4	Student presentations on papers	Group readings to be posted on ELMS	
	Thurs. 12/6	Student Presentations on papers	Group readings to be posted on ELMS	
16	Tues. 12/11	Wrap up and Final Exam Review	Study	
	Thurs.	FINAL EXAM – MAJOR SCHEDULED GRADING EVENT	1:30 p.m. – 3:30 p.m.	