

ENVIRONMENTAL LAW AND POLICY¹

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 and Contact: I have office hours 7:45 p.m. to 8:45 p.m. Monday nights in Harkness 307, after I walk over following the evening's class. I am also happy to meet by appointment. The best way to contact me is by email (sdaly3@ur.rochester.edu). As a practicing lawyer and not a full-time teacher, I usually check my UR email only once or twice per day. I try my best to review and respond to any UR emails within 24-48 hours.

Required Texts:

Environmental Law and Policy 6th Edition (2024) (Salzman)
James E. Salzman | Barton H. Thompson Jr.
ISBN: 978-1-68561-572-7

The Making of Environmental Law 2nd Edition (2023) (Lazarus)
Richard J. Lazarus
ISBN: 9780226695457

Unless otherwise specified, 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.

Additional readings referenced below will be made available on Blackboard.

¹ *Professor Daly reserves the right to update and revise the syllabus from time to time over the course of the semester.*

Grading:

Quizzes, Small Assignments, and In-Class Work: 30% of course grade

Midterm exam: 25%

Final exam: 45% (Saturday, May 10, 12:30 p.m.)

Quizzes, Small Assignments, and In-Class Work:

To incentivize class attendance and completion of the assigned reading, brief “pop” quizzes will be given at the beginning (or end) of various class periods throughout the semester. The quizzes will be unannounced and distributed during a given class period. If you are present and on time for class, generally pay attention to lectures, and have a general grasp of the assigned reading for that class period, 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.

In addition to quizzes, occasional in-class work or other activities (e.g., giving an informal presentation on a topic, looking up a local environmental issue, etc.) will be awarded quiz credit, typically on a “*did you perform the task with adequate effort, yes or no?*” basis.

Your one lowest quiz/small assignment/in-class work score during the semester will be dropped and excluded from the calculation of your quiz grade.

Attendance:

Your quiz score for the semester will largely be dependent on your successful ability to attend lectures. 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 or in-class assignment. 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 events. Absences without prior notification will be treated as unexcused, except in rare and unexpected emergencies (e.g., car accident or ER visit).

Class Participation:

Active student engagement and participation in class is very important to me. I therefore offer a total of **two (2) extra credit bonus points** that may be added to a student’s test scores, one for the midterm and the other for the final exam, in order to incentivize student participation during class sessions.

The bonus point will be awarded if I determine that the student has made a positive contribution to class discussions by, for example, responding thoughtfully to questions posed, asking sharp and informed questions, building upon the thought of another student, while at the same time not serving as a distraction or impediment to in-class learning. Quality of participation is more likely to be rewarded over quantity. Students will have an opportunity on the exams to make their case as to why they believe they ought to be awarded the participation bonus point.

Midterm and Final:

A focus of the midterm and final exams will be the application of course concepts to various factual scenarios, similar to the “Problems” we will address during class periods.

Students will be permitted to and indeed incentivized to use as reference during the exams a single 8x11 inch piece of paper, with their handwritten notes on it. The notes page must be handwritten and not typed or computer generated. Both sides of the single piece of paper may be used. You may write as small or as large as you like, provided that: (i) all of it is handwritten and not typed, and (ii) your full name is prominently displayed so that I can find and identify it on the page.

The pieces of paper must be turned in with your completed exams and will be awarded completion credit, although they will not be evaluated for grading or substance except for completion and compliance with the foregoing rules.

Unless otherwise specified herein or during the course of the semester, there are no “extra credit” opportunities in this course available to individual students. Grades are final except for administrative (i.e. mathematical) calculation errors or to the very limited extent otherwise authorized by any applicable University Policy.

Academic Honesty:

Students must conduct themselves in accordance with the University’s [Academic Honesty Policy](#). Quizzes, the midterm, and final exams are all closed book (except for the exception of the single piece of paper referenced above for the midterm and final). Reference to other materials, Artificial Intelligence, or consulting with others during the course of any given quiz or exam is a violation of the Academic Honesty Policy.

Schedule of Classes:

Introduction

Wed., January 22 – Introduction

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

Fri. (!), January 24 – Challenges of Regulating Human Impact on the Environment

- Scientific uncertainty; complexity; dynamism; and controversy

Salzman – pgs. 17-31

Recommended:

Lazarus – pgs. 13-38

Mon., January 27 – Challenges of Regulating Human Impact on the Environment, Cont.

- The groundwater problem

NYTimes “America is Using Up Its Groundwater Like There’s No Tomorrow”

https://www.nytimes.com/interactive/2023/08/28/climate/groundwater-drying-climate-change.html?unlocked_article_code=1.qU4.KN4h.0XgQarEvGZ72&smid=url-share

Video- PCAST: Understanding Groundwater (Dec. 1, 2023), from ~3:00 to ~29:00

<https://www.youtube.com/watch?v=i0fKuMuU4Iw>

Legal Foundations

Wed., January 29 – Three Branches of Government (Congress, Agencies, and Courts)

- Introduction to Three Branches
- Local, state, and federal laws
- Congressional Lawmaking
- Limits on Congress’s power to legislate

Salzman – pgs. 75-89

Importance of State Environmental Law, 1 L. of Env’tl. Prot. § 7:1, pdf.

Lazarus – pgs. 39-53

Mon., February 3 – Three Branches of Government (Congress, Agencies, and Courts)

- Administrative agencies and administrative law

Salzman – pgs. 66-77

Wed., February 5 – Three Branches of Government (Congress, Agencies, and Courts)

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

How to Read the Opinion of a Court, pdf.

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), pdf.

Article: Legal Standing for Nature: The Road Not Taken (McKeown) (2023)

The Rise of Modern Environmental Law and the National Environmental Policy Act

Mon., February 10 – The Industrial Revolution and the Common Law Origins of Environmental Law

- Earliest forms of environmental regulation
- What is the common law?
- Common law remedies for environmental problems
- Pros and cons of the common law approach

Salzman – Chapter 1, pgs. 3-16

Meiners & Yandle, “Common Law and the Conceit of Modern Environmental Policy” (1999)

Wed., February 12 – The Start of the Environmental Decade

- Introduction to NEPA and the birth of modern environmental law
- Rachel Carson’s Silent Spring
- NEPA’s ambitious purposes

[Reading continued from last class; may be supplemented as we get closer]

Mon., February 17 – The National Environmental Policy Act and the Start of the Environmental Decade

- Structure of NEPA statute
- Role of the Council on Environmental Quality (CEQ)
- Trigger for Environmental Impact Statements

**Salzman – pgs. 355-366
NEPA Statute, pdf.**

Lazarus – pgs. 81-89, 100-103

Wed., Feb. 19 – NEPA Continued

- Requirements for Environmental Impact Statements
- The Importance of an Environmental Impact Statement
- NEPA Litigation

Salzman – pgs. 366-373

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

NEPA Law and Litig., § 1:5 (2023-2024), pdf.

The Federal Clean Water Act

Mon., February 24 – Introduction to the Federal Clean Water Act

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

Salzman – pgs. 185-206

CWA §§ 101, 301, 402, 502

Wed., February 26 – The Clean Water Act, Point Source Regulation

- Trigger for NPDES permits cont.
- NPDES technology-based standards
- Enforcement/citizen suits

Saltzman – 95-110 (stop at standing)

CWA § 505

Mon., March 3 – The Clean Water Act, Non-Point Source Regulation

- Water Quality Standards and the Role of States
- Non-point source pollution

Salzman – pgs. 206-209 (Stop at “Water Quality Trading”)

“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., March 6 – MIDTERM – Administered in Class

---- SPRING BREAK ----

Mon., March 17 – The Clean Water Act and Wetlands

- Importance of wetlands in relation to clean water
- Rivers and Harbors Act of 1899
- Section 404 permitting
- Interpretation of “Waters of the United States”

Salzman – pgs. 295-307

Wed., March 19 – Clean Water Act and Wetlands continued

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

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

The Federal Clean Air Act

Mon., March 24 – Clean Air Act Introduction

- Air Pollution Generally
- Sources of Air Pollution
- Structure of the CAA
- NAAQS, SIPS, and Cooperative Federalism

Salzman – pgs. 121-130

Section 101(b)(1) of the CAA

Sections 108, 109, and 110 of the CAA, 42 U.S.C. §§ 7408-7410

Wed., March 26 – Clean Air Act Continued

- NAAQS, SIPS, and Cooperative Federalism cont.

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

Mon., March 31 – Clean Air Act Continued

- New Source Review
- Technology-based standards

Salzman – pgs. 131-144
Section 111 of the CAA, 42 U.S.C. § 7411

Environmental Law and Climate Change

Wed., April 2 – Climate Change Introduction

- Science of Climate Change
- The wicked problem of regulating greenhouse gas emissions
- Group discussions and presentations

Salzman – pgs. 160-173
Lazarus – pgs. 197-216

Mon., April 7 – Climate Change and the Clean Air Act

- Group discussions cont.
- Intro to Climate Change under the Clean Air Act
- Endangerment finding for CO₂ by EPA

Salzman – pgs 173-183
***Massachusetts v. EPA*, 549 U.S. 497 (2007)**

Wed., April 9 – Climate Change and the Clean Air Act

- The Major Question Doctrine
- Environmental rights movement and State Constitutions

Salzman – pgs 173-183 (cont.)
***West Virginia v. EPA*, 597 U.S. __ (2022)**

Sources of state environmental law, State Constitutional Provisions, 1 L. of Env'tl. Prot. § 7:3, pdf.

Waste, Superfund, and Environmental Justice

Mon., April 14 – The Resource Conservation and Recovery Act

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

Excerpts from RCRA and Superfund: A Practice Guide

Salzman 247-265

Lazarus, 125-128

Wed., April 16 – Introduction to Superfund (extended class for Movie Night)

- In Class Movie: *Poisoned Ground: The Tragedy at Love Canal*

Mon., April 21 – Superfund/CERCLA

- Joint and Several Liability solution to abandoned waste sites
- PFAS cleanup and regulation

Salzman 265-285

PFAS article

Wed., April 23 - RCRA and the Rise of the Environmental Justice Movement

- Introduction to environmental justice and environmental racism
- In-class discussion about environmental justice

Article: Environmental Justice: Grassroots Activism and Its Impact on Public Policy Making (Bullard and Johnson) (2000)

Article: Environmental Racism: A Skeptic's View (Jeffreys) (1994)

Mon., April 28 – Legal Tools for Effectuating Environmental Justice

- Title VI of the Civil Rights Act of 1964
- NEPA and environmental justice

Chapter 5, “Enforcing Environmental Protections” from Toxic Communities, environmental racism, industrial pollution, and residential mobility (Taylor 2014)

Article: “Why the EPA Backed Down” (Sept. 23, 2024), the Atlantic

Wed., April 30 – Wrap up

Lazarus, pgs. 295-344

Final Exam: Saturday, May 10 at 12:30 p.m.