

**ENVS 60 Syllabus (Sept. 8, 2017 Version)**  
**Environmental Law**  
**Fall 2017**  
**Class Location: Fairchild 213**  
**Class Meeting time: 10 (10:10 – 11:15 am, M, W, F)**  
**X-hour, 12:15 -1:05 pm, Th**

**Instructor** Ross Jones  
**Office** Fairchild 110A  
**Contact info** Email: [ross.t.jones@dartmouth.edu](mailto:ross.t.jones@dartmouth.edu); phone: 603-646-0261  
**Office hours:** Thursday, 1:00-3:00pm – or by appointment

**Textbooks & Other Readings**

**Textbook:** **Environmental Law and Policy (4<sup>th</sup> ed.) by James Salzman & Barton H. Thompson, Jr.** This book 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.

**Environmental Regulation: Law, Science, and Policy (7th edition), 2013. by Robert V. Percival, Christopher H. Schroeder, Alan S. Miller, and James P. Leape.**  
This is a law school level case/text book for those who want a more in-depth exploration of the issues.

**Additional Readings** (articles, cases, statutes) will be posted on Canvas 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 Canvas 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).

**Course Description**

Environmental law and policy deals with the ways that human societies regulate the interaction of individuals, communities, businesses, and governments with environmental systems – both natural systems, such as forests, grazing lands, and marine ecosystems, and human-created systems such as the manufacturing industry, fossil fuel production and use, agriculture, and cities. While the focus of this course is environmental law, it is for anyone interested in learning about the foundations and practice of the Law in general, both nationally and internationally. Using the regulation of pollution, waste, land (private and public), and biodiversity as our models, we will cover how laws are made by courts (judicial opinions), legislatures (statutes), administrative agencies (regulations), and Presidents (executive orders). In addition, through assignments and class projects, we will cover the fundamentals of legal research, writing, and argument that are critical for the practice of law, as well as being necessary for anyone interested in the study of environmental law and policy. Most lectures will be available for online viewing, leaving more class time for discussions, mock legal proceedings, and other activities.

## What is Environmental Law?

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.

## Course Objectives

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 science, economics, and social justice and,
4. To discuss how to improve environmental law to better deal with climate change, human population growth, energy needs, and biodiversity loss in the future.

## Grades

Grades will be based on:

- 20% Take home Mid-term exam
- 20% Take home Final exam (cumulative)
- 20% Four mini-paper assignments (750 - 1,000 words, not counting citations, each)
- 15% Legal Brief (2,000 - 2,500 words)
- 15% Group project(s): in-class group projects (e.g., mock trials, presentations) with out-of-class preparation
- 10% Individual participation in class discussions and group projects

- 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 *mini-papers* will allow you to synthesize concepts and examples of various environmental laws, as well as provide you with additional feedback on your understanding of the material.
- 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 Canvas. In addition, we will discuss both types of briefs in class.

- The *group project(s)* will range from in-class mock legal proceedings to end of term group presentation.
- **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 Canvas 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, contact Student Accessibility Services ([Student.Accessibility.Services@Dartmouth.edu](mailto:Student.Accessibility.Services@Dartmouth.edu); 603-646-9900) and/or visit the Academic Skills Center in 224 Baker Library to register for support services.

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

<http://www.dartmouth.edu/~uja/honor/>

Note: an online version of Sources and Citation at Dartmouth College is available at:

<http://writing-speech.dartmouth.edu/learning/materials/sources-and-citations-dartmouth>

### **Religious Observances**

Some students may wish to take part in religious observances that occur during this academic term. If you have a religious observance that conflicts with your participation in the course, please meet with me before the end of the second week of the term to discuss appropriate accommodations.

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

## CLASS SCHEDULE (09/10/2017 Version - Subject to Change)

### Topic, Readings, Online Lectures, & Class Discussions/Projects

(Notes: 1. All readings are **required** unless otherwise noted, 2. Additional and/or Replacement Readings will be added through the term, announced in class, and added to course's Canvas site; 3. Page numbers for Environmental Law and Policy textbook are for 4<sup>th</sup> edition; 4. Video lectures – via Canvas site)

### 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 9/11 Overview of course/Why do we have environmental law? What should be the goals of environmental law?

### Environmental Law in the News

#### Changes to Pollution and Climate Change Law in 2017

##### Examples:

1. New York Times article on the current EPA's move to narrow the range of waters regulated by the federal government: [https://www.nytimes.com/2017/06/27/climate/epa-rescind-water-pollution-regulation.html?rref=collection%2Ftimestopic%2FEnvironmental%20Protection%20Agency&action=click&contentCollection=timestopics&region=stream&module=stream\\_unit&version=latest&contentPlacement=10&pgtype=collection&\\_r=0](https://www.nytimes.com/2017/06/27/climate/epa-rescind-water-pollution-regulation.html?rref=collection%2Ftimestopic%2FEnvironmental%20Protection%20Agency&action=click&contentCollection=timestopics&region=stream&module=stream_unit&version=latest&contentPlacement=10&pgtype=collection&_r=0)
2. PBS Newshour story on the Trump administration's campaign to dismantle the Obama's administration's climate change agenda: <http://www.pbs.org/newshour/bb/trump-launches-aggressive-campaign-dismantle-obama-climate-agenda/>
3. A New York Times article about the recent Executive Order to dismantle the Obama administration's Clean Power Plan: [https://www.nytimes.com/2017/03/27/science/what-to-know-about-trumps-order-to-dismantle-the-clean-power-plan.html?\\_r=0](https://www.nytimes.com/2017/03/27/science/what-to-know-about-trumps-order-to-dismantle-the-clean-power-plan.html?_r=0)
4. State-based approaches for dealing with Climate Change - the California example: <https://www.nytimes.com/2017/07/26/climate/california-climate-policy-cap-trade.html>
5. An article about how pressure from states can impact federal environmental policy: <https://www.nytimes.com/2017/08/03/climate/epa-reverses-course-on-ozone-rule.html?mcubz=0>

#### Biodiversity conservation and the Law in 2017

##### Examples:

1. NPR radio story and article about the Trump administration's plan to revise the conservation plan for the Western Sage Grouse: <http://www.npr.org/sections/thetwo-way/2017/08/07/542118338/trump-administration-revises-conservation-plan-for-western-sage-grouse>
2. A New York Times article on recent decision to de-list the Yellowstone grizzly bear and the opposition to the decision from conservation groups and Native Americans: <https://www.nytimes.com/2017/06/22/science/yellowstone-grizzly-bear-endangered-species-list.html?mcubz=0>

**Background Reading:** *Law & Ecology*, Chapter 1 (PDF on Canvas – useful overview for much of the course).

- W 9/13 Sources of environmental law – history  
Reading:  
 1. *Environmental Law and Policy*, Chapter 1  
 2. *Law & Ecology*, Chapter 2 (PDF on Canvas)  
 3. [Vermont Law School – Climate Change in the Courts](#) (a short summary of the current state of how courts are dealing with climate change litigation)  
Video Lecture: Common Law Foundations (**Canvas**)  
Audio: [American Electric Power Co., Inc. v. Connecticut - Oral Argument](#)

There is a link to the audio for the oral argument on this page. This case is a relatively recent judicial opinion that deals with the public nuisance law on a large scale (the opposite of Aldred's case that is discussed in the video lecture) Be sure to listen to Barbara Underwood's oral argument which begins at 35:50 minutes. Entire argument = 1 hour 16 minutes

Optional Readings:(Common Law Historical Cases) - I discuss these cases in the video lecture. They provide a nice snapshot of the common law approach to environmental law from 1610 (Aldred's case) to 1970 (Spur Industries). I will add more cases to the Canvas site if/when we discuss them: *Aldred's Case*, *St. Helens Smelting*, *Georgia v. Tennessee Copper*, *Missouri v. Illinois*, *Spur Industries*.

- F 9/15 Sources of environmental law – history continued & types of laws  
Readings:  
 1. *Law & Ecology*, Chapter 3 (PDF on Canvas)  
 2. *Environmental Law and Policy*, Chapter 2  
Video Lecture: Introduction to Environmental Law – part 1 (history)
- M 9/18 Administrative & Regulatory Law  
Readings:  
 1. *Environmental Law and Policy*, Chapter 3  
 2. *Environmental Law and Policy*, Chapter 4 (useful reference material for all of course)  
Video Lecture: Introduction to Environmental Law – part 2 (administrative agencies)  
**Mini-paper #1: Common Law versus Regulatory approaches (Due Friday 9/22)**
- W 9/20 Environmental Assessment & NEPA – an Introduction  
Readings:  
 1. (Textbook) *Environmental Law and Policy*, Chapter 12;  
 2. (Case) *Calvert Cliffs Coordinating Committee v. United States Atomic Energy Commission (Canvas)*;  
 3. Additional Reading Richard Lazarus, *The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtains*, 100 Geo. L.J. 1507 (2012) – Read pages 1507-1513; 1535-1565; 1585-1586 (**Canvas**)  
Video Lecture: Introduction to NEPA

## **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

- F 9/22 Air Pollution - Part 1: Approaches to regulating air pollution  
Readings:  
1. (Textbook) *Environmental Law and Policy*, Chapter 5  
2. Additional Reading EPA-Clean Air Act – Information (**Canvas**)  
Video Lecture: Introduction to the Clear Air Act  
**Mini-paper #1 Due**
- M 9/25 Air Pollution - Part 2: The Clean Air Act – Key Mechanisms in detail  
Readings:  
1. (Case) *Lead Industries Association v. EPA* (**Canvas**)  
2. (Statute): Selected sections from Clean Air Act (**Canvas**)  
The file "Clean Air Act - Selected Sections part 1" contains excerpts from four sections from the Clean Air Act:  
1. 7401 - Congressional findings and declaration of purpose  
2. 7408 - Air quality criteria and control techniques (also referred to as section 108)  
3. 7409 - National primary and secondary ambient air quality standards (section 109)  
4. 7410 - State implementation plans (section 110)  
You should skim the file to understand how the sections are structured, the topics covered in each section, and the level of detail used.
- W 9/27 Air Pollution - Part 3: Post 1990 (Acid Rain, Ozone, and Climate Change)  
Readings:  
1. (Case): *Alliance for Clean Coal v. Bayh* (**Canvas**)  
2. (Statute): Clean Air Act – Acid Rain Sections (**Canvas**)  
3. (Article): Costs-Benefits of CAA and Acid Rain Program, 2005 (**Canvas**)

### Water Pollution

- F 9/29 Water Pollution - Part 1: Types of pollutants, sources, and approaches  
Readings:  
1. (Textbook) *Environmental Law and Policy*, Chapter 7  
2. Additional Reading **TBA**  
Video Lecture: The Regulation of Water Resources
- M 10/2 Water Pollution – Part 2: Clean Water Act – Key mechanisms and comparisons with CAA  
Readings:  
1. (Statute) Selected sections from Clean Water Act  
2. (Article) *Assessing the US Clean Water Act 303(d) listing process for determining impairment of a waterbody*, Jr. of Environmental Management 86 (2008) 699-711 (**Canvas**)  
3. (Article) *Achieving sustainable development: a review of the environmental balancing act in two key clean water act regulatory programs*, Environmental Science & Policy 3 (2000) xv-xx. (**Canvas**)  
**Mini-paper #2: State-based approaches for regulating air versus water pollution**

- W 10/4 Water Pollution – Case Study: Vermont Yankee & the Connecticut River  
Readings:  
 1. (Case) *Entergy Corp. v. Riverkeeper, inc.*, 129 S.Ct. 1498 (2009) (**Canvas**)  
 2. (Legal briefs) Excerpts from various legal briefs associated with Vermont Yankee case will be posted on **Canvas**  
Video Lecture: Vermont Yankee – Law, Science, and Economics

## 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 10/6 Regulating Toxic Substances  
Readings:  
 1. (Textbook) *Environmental Law and Policy*, Chapter 8 & Chapter 9 (pp. 231-247)  
Video Lecture: Risk, Toxic Substances, & Waste Management (Parts 1 & 2)  
**Mini-paper #2 Due**
- M 10/9 Waste Management & CERCLA  
Reading (textbook): *Environmental Law and Policy*, Chapter 9 (pp. 247 – 264)  
Reading (case): *Burlington Northern & Santa Fe Railway Co. v. United States*, 129 S.Ct. 1870 (2009) (**Canvas**)  
Video Lecture: Risk, Toxic Substances, & Waste Management (Part 3)

**\*\*\_Mid-term Exam distributed (via email & Canvas) on Monday, October 9 by 12:00pm and due by Noon on Thursday, October 13 - My preference is for you to email it to me as an attachment (MS Word, Apple Pages, or PDF) Or submit it to the Canvas site. However, if you prefer, you can turn a hard copy into the ENVS office (Steele 113).**

- W 10/11 Mock CERCLA Negotiation

## 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

- F 10/13 Regulatory Takings  
 1. *Environmental Law and Policy*: pp. 79-84  
 2. Reading (case): *Lucas v. South Carolina Coastal Council* (**Canvas**)  
 3. Reading (journal article): History of Taking (**Canvas**)  
 4. Powerpoint slides on Regulatory Taking (**Canvas**)

## Regulating Public & Common Property – Natural Resource Management

- M 10/16 Regulating & Managing Natural Resources – Public Lands, Wetlands, and Fisheries  
Readings:  
1. (Textbook): *Environmental Law and Policy*, Chapter 10 (pp. 271 – 287)  
2. (Book Excerpts) *Law and Ecology*, Chapter 6 (pp. 203 – 215) & Chapter 9 (pp. 295 – 313) (**PDFs on Canvas**)  
3. Additional Reading **TBA**  
Video Lecture: Natural Resources Management – part 1 (Public Lands & Wetlands)  
**Mini-paper #3: Public versus Private land regulation**

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

- W 10/18 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 (**Canvas**)  
2. (Article) The Role of Public Lands in a Low-Carbon Economy (2010) (**Canvas**)  
Video Lecture: Natural Resource Management – Forests & Fisheries
- F 10/20 Case Study - Ecological Sustainability and Public Forest Management  
Readings:  
1. (Case): *Sierra Club v. Marita* (7<sup>th</sup> Circuit opinion) (**Canvas**)  
2. (Article): Walter Kuhlmann, *Defining the Role of Conservation Biology in the Law of Protecting Ecosystems*, in ENVIRONMENTAL POLICY AND BIODIVERSITY 209, 218 (1994). (**Canvas**)  
3. Supplemental Readings (cases): *Sierra Club v. Marita* (District Court opinions) (**Canvas**)  
**Mini-paper #3 Due**
- M 10/23 Agriculture & Environmental Law  
Reading:  
1. (Article) J.B.Ruhl, *Farms, Their Environmental Harms, and Environmental Law*, *Ecology Law Quarterly*, 27:263 (2000). (**Canvas**)  
2. Farm Waste & Water Contamination – NY Times article (**Canvas**)

## Protecting Biodiversity – the Endangered Species Act (ESA)

- W 10/25 The ESA – Statutory & Regulatory Mechanisms  
Readings:  
1. (Textbook): *Environmental Law and Policy*, Chapter 10 (pp. 287-309);  
2. *Law & Ecology*, Chapter 6 (pp. 193 – 202) & Chapter 9 (pp. 286 – 295) – (**PDFs on Canvas**)  
3. (Statute): excerpts from the ESA (**Canvas**)  
Video Lecture: Introduction to the Endangered Species Act
- F 10/27 The ESA – (the cases & the future)  
Readings:  
1. (Case): *Babbitt v. Sweet Home* (**Canvas**)



2. (Article): Keeping it Relevant (2009) (**Canvas**)
3. (Statute): ESA – additional sections (**Canvas**)

- M 10/30 Balancing Biodiversity protection & Economic Development – Habitat Conservation Plans (HCPs)  
Readings: (journal articles): HCPs – from the science perspective; HCPs – from the landowner perspective; Additional Readings (**Canvas**)  
**Mini-paper #4: Pros & cons of federal biodiversity law**

### **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.

- W 11/1 Ecosystem Management – Case Studies (Florida Everglades, Chesapeake Bay, Lake Tahoe)  
Readings:  
 1. (Book Excerpt): *Law & Ecology*, Chapter 8 (**PDF on Canvas**)  
 2. (Case): *South Florida Water Management Dist v. Miccosukee Tribe of Indians – U.S. Supreme Court* (**Canvas**)  
 3. Videos: Two videos about the Florida Everglades (**Canvas**)  
Video Lecture: Environmental Systems & the Law

### **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.

- F 11/3 The Structure of International Environmental Law/International Biodiversity Protection  
Readings:  
 1. *Law & Ecology, Chapter 10* (**Canvas**)  
 2. (Article) William J. Snape, III, *Joining the Convention on Biological Diversity*, Sustainable Development Law & Policy, Spring 2010 (**Canvas**)  
 3. (Article) Melissa Blue Sky, *Getting on the List: Politics and Procedural Maneuvering in CITES Appendix I*, Sustainable Development Law & Policy, Spring 2010 (**Canvas**)  
Video Lecture: International Law & Biodiversity Protection  
**Mini-paper #4 Due**
- M 11/6 Global Change Regulation (Ozone, Greenhouse gases, and other international issues)  
Reading:  
 1. (Textbook) *Environmental Law and Policy*, Chapter 6  
 2. **Biodiversity Treaties Information** (**Canvas**)

W 11/8 Energy and Environmental Law  
Reading (textbook): *Environmental Law and Policy*, Chapter 11

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

F 11/10 Group presentations

M 11/13 Group presentations

**\*\*Note: Legal Brief due on Monday, November 13\*\***

**\*Final Exam will be distributed (via email & Canvas) at beginning of Final Exam period (Friday, Nov. 17) and will be due by 3:00pm of final day (Wednesday, Nov. 22) of Final Exam period.\***