Environmental Law
Spring 2018 Syllabus

Instructor: Megan M. Herzog, JD, MS
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Weekly Class Meeting: Monday, 1:30–4:00 pm

Course Description
This course will offer a broad and conceptual overview of environmental law and policy specifically geared to non-lawyers. Coverage will include major federal statutes (such as the Clean Water Act, Clean Air Act, and National Environmental Policy Act) cross-cutting themes (such as scientific uncertainty, market failures, and the challenge of enforcement), and dominant theories that drive policy development (such as environmental rights and environmental justice). The course will include an overview of the background and context necessary to understand the development and operation of environmental law, including the basics of administrative law, constitutional law, and standing for citizen groups.

Texts

All other readings are either publicly available online or will be distributed. Students should refer to the syllabus for detailed reading instructions.

Evaluation
Students will be graded on the basis of three mini-papers and an in-class presentation (65%) + participation and weekly reaction papers (35%).

Participation and Weekly Reaction Papers
A student who receives full credit for participation is a student who attends all classes, arrives to class on time, submits weekly reaction papers as required, is actively engaged in the class, consistently joins class discussions with thoughtful perspectives, asks thoughtful and relevant questions, and engages respectfully with others in the classroom. Missing a large portion of class or arriving unprepared constitutes an absence. If a student cannot attend a class meeting because of illness or another excusable reason, the student is asked to please contact the instructor in advance.

All students are expected to complete all required readings and turn in a reaction paper via email to the instructor prior to most class meetings. Over the course of the semester, each student may skip up to two reaction papers without penalty. A student must notify the instructor to invoke the
option to skip a reaction paper. The reading will provide “Questions and Discussion” prompts to guide students’ attention, but students may instead or additionally discuss other issues appropriate to the readings. Reaction papers should evidence care, thoughtfulness, and that the student has engaged with key issues raised by the readings. Reaction papers should be approximately 2 to 3 paragraphs in length. Formal citations to the readings are not necessary so long as it is clear which sources the student is referencing. Reaction papers may be transmitted in the body of an email (preferred) or attached as attachments in .DOC or .DOCX format.

Students must email weekly reaction papers to Megan.Herzog@tufts.edu by 6:00PM on the evening before class. Each student may skip up to two reaction papers without penalty; student must notify the instructor to invoke the option to skip a paper.

Mini-Papers
Students will be expected to submit three mini-papers over the course of the semester. The instructor will evaluate mini-papers based on: the quality and depth of the student’s analysis; the extent to which the paper evidences that the student has engaged with the key issues raised by the materials used; and writing quality. Proper grammar, proof-reading, clear writing, organization, and an appropriate tone are expected.

Mini-papers may take any of the below formats:

a) Enhanced Reaction Paper. Enhanced reaction papers should critically respond to, reference, and expand upon the readings for a particular week, but should also incorporate additional materials or research outside of the required readings (e.g., journal articles, policy documents, secondary sources). As with shorter weekly reaction papers, students may respond to prompts, and may instead or additionally discuss other relevant issues. Note that the enhanced reaction paper is in addition to—not a substitute for—required weekly reaction papers.

b) Policy Brief or Whitepaper. A policy brief or whitepaper should succinctly introduce a problem relevant to environmental law, describe the impacts of the problem, and present a preferred law or policy solution (or suite of solutions) to address the problem. The target audience for a policy brief or whitepaper is decisionmakers at any relevant level of government: local, state, federal, or international. The goal of such a report is to help decisionmakers who may not otherwise be familiar with an issue to make a decision or take other action to address the issue. (See, e.g., the Emmett Institute’s Pritzker Environmental Law and Policy Brief series, http://www.law.ucla.edu/centers-programs/emmett-center-on-climate-change-and-the-environment/Pages/pritzker_briefs.aspx.) A mini-paper in the form of a policy brief may reference readings, but should also incorporate additional materials or research outside of the required readings (e.g., journal articles, policy documents, secondary sources). Note that in comparison to a typical policy brief, the mini-paper policy brief will be shorter.

A mini-paper in the form of an op-ed may reference readings, but should also incorporate additional materials or research outside of the required readings (e.g., journal articles, cases, policy documents, secondary sources). Note that only one mini-paper can take the form of an op-ed. Note also that in comparison to a typical op-ed, the mini-paper op-ed will be longer and include citations.

All mini-papers should be approximately 3 or more pages in length (Times New Roman, size 12 font, single-spaced, 12-pt return between paragraphs, 1” page margins, footnote citations, page numbers). Each student should clearly list his or her name and the date on the paper. Documents should be emailed as attachments in .DOC or .DOCX format.

Students must email mini-papers to Megan.Herzog@tufts.edu by 6:00pm on the due date. Mini-papers are due: Friday, March 2nd, Friday, April 6th, and Friday, May 11th.

Presentation
Students also will be expected to prepare a ten-minute presentation to the class related to environmental law. The instructor will circulate a sign-up sheet. The presentation should introduce a topic, occurrence, concept, or idea additional to those discussed in depth in the required readings, or expand further upon something covered in the readings and in class. The presentation must be related to environmental law. Think of this as an opportunity to teach something interesting to the class and delve into an issue the course will not otherwise cover in depth. Sign up for a presentation slot here: http://tinyurl.com/zzm5x3l.

Students will choose a presentation topic in brief consultation with the instructor. The instructor will evaluate presentations based on: preparation, organization, clarity of expression, the quality and depth of the student’s analysis, the extent to which the presentation evidences that the student has engaged in critical thinking about the topic, time management skills, and the impact of visual aids.

Potential presentation topics could include, but are not limited to:
- Legal processes related to a particular endangered species, Total Maximum Daily Load ("TMDL") program, superfund site, or air or water pollutant.
- A state environmental law statute or local environmental ordinance (e.g., the Massachusetts Global Warming Solutions Act, California Environmental Quality Act, a state environmental justice standard)
- A significant environmental law case (note that all U.S. Supreme Court opinions are freely available online via multiple sources, including https://www.oyez.org/).
- A piece of environmental law-related legislation pending in the state or federal legislature.
- A current environmental law controversy (e.g., controversy over the “Waters of the United States” rule, litigation of the Clean Power Plan, conflict regarding whether the federal government should delegate authority to Massachusetts to administer the Clean Water Act, efforts to repeal the Endangered Species Act, the campaign for a carbon tax in Vermont).
Laptop, Tablet, and Phone Policy
Please put cell phones and other electronic devices on silent mode, and do not answer phones during class. Use of electronic devices such as laptops and tablets is permitted in the classroom to the extent that a student uses these devices in a way that is not distracting to any other student and does not negatively interfere with another student’s learning experience. A student who violates this policy will be asked to leave the classroom and will lose participation credit.

Field Trip
See environmental lawmaking in action! TBA

Students are expected to attend and write a reaction paper (per the requirements above) about their experience. The field trip reaction paper cannot be skipped.

Students who attended must email the field trip reaction paper to Megan.Herzog@tufts.edu by 6:00PM on DATE TBA.

The out-of-class field trip substitutes for one class session. If a student is unable to attend, the student should notify the instructor and alternative arrangements will be made. Alternative arrangements will also involve active participation in environmental lawmaking through attending a different event or filing written comments on a proposed new policy.

Course Schedule & Assignments
The following schedule is subject to change throughout the course of the semester. Students will be provided with an updated syllabus in the event of any significant changes.
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<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Assignment</th>
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<tr>
<td>TBD:</td>
<td>Your In-Class Presentation</td>
<td>□ 10-minute presentation (see description above)</td>
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<tr>
<td>Mon., Jan. 22</td>
<td>Tools of the Trade: Basic Themes of Environmental Law</td>
<td>□ TEXTBOOK, ch. 1-3</td>
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| Mon., Jan. 29 | Tools of the Trade: Enforcement; Remedies; Law vs. Advocacy | □ TEXTBOOK, ch. 4  
□ *Lujan v. Defenders of Wildlife* (U.S. Supreme Court 1992)  
□ *Boomer v. Atlantic Cement Co.*, (Court of Appeals, N.Y., 1970)  
□ Reaction paper due by 6:00PM on the night before class. |
| Mon., Feb. 5 | Pollution: The Clean Air Act                   | □ TEXTBOOK, ch. 5  
□ *Lead Industries Assoc. v. EPA* (D.C. Circuit 1980)  
□ *Chevron v. NRDC* (U.S. Supreme Court 1984)  
□ Reaction paper due by 6:00PM on the night before class. |
| Mon., Feb. 12 | Pollution: Climate Change & Energy             | □ TEXTBOOK, ch. 6—part II only  
□ *Massachusetts v. EPA* (U.S. Supreme Court 2007)  
□ *AEP v. Connecticut* (U.S. Supreme Court 2011)  
□ Reaction paper due by 6:00PM on the night before class. |
<p>| Thurs., Feb. 22 | NO CLASS                                      |                                                                             |</p>
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| Mon., Feb. 26| Pollution: Climate Change & Energy (cont’d) | - TEXTBOOK, ch. 11  
  [http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=6015&context=fss_papers](http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=6015&context=fss_papers)  
- Eduardo Porter, *Counting the Cost of Fixing the Future*, N.Y. TIMES (Sept. 11, 2013),  
- Reaction paper due by 6:00PM on the night before class |
| Fri., Mar. 2  | MINI-PAPER #1                    | - Mini-Paper #1 due by 6:00PM  |
| Mon., Mar. 5  | Pollution: Water Pollution       | - TEXTBOOK, ch. 7  
- Reaction paper due by 6:00PM on the night before class. |
| Mon., Mar. 12 | Pollution: Regulating Toxic Substances & Waste | - TEXTBOOK, ch. 8-9  
- *Philadelphia v. N.J.* (U.S. Supreme Court 1978)  
- Reaction paper due by 6:00PM on the night before class. |
<p>| Mon., SPRING BREAK—NO CLASS | | |</p>
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| Mar. 19    | Pollution: Oil Spills                      | **NATIONAL COMMISSION IN THE BP DEEPWATER HORIZON OIL SPILL AND OFFSHORE DRILLING,**
|            |                                            | **DEEPWATER: THE GULF OIL DISASTER AND THE FUTURE OF OFFSHORE DRILLING,** REPORT TO THE **PRESIDENT (2011),**
|            |                                            | [https://www.gpo.gov/fdsys/pkg/GPO-OILCOMMISSION/pdf/GPO-OILCOMMISSION.pdf](https://www.gpo.gov/fdsys/pkg/GPO-OILCOMMISSION/pdf/GPO-OILCOMMISSION.pdf) – read ch. 6 (pp. 173-95) |
|            |                                            | **VANN & MELTZ, CONG. RESEARCH SERV., R41972,**
|            |                                            | **THE 2010 DEEPWATER HORIZON OIL SPILL: NATURAL RESOURCE DAMAGE ASSESSMENT UNDER THE OIL POLLUTION ACT (2013),**
|            |                                            | **U.S. DEPT. OF JUSTICE, FACT SHEET: PROPOSED CONSENT DECREE WITH BP FOR THE DEEPWATER HORIZON/MACONDO WELL OIL SPILL (2015),**
|            |                                            | Reaction paper due by 6:00PM on the night before class. |
| Mon., Mar. 26 | Natural Resources: Wetlands & the Public Trust | **TEXTBOOK, ch. 10—parts I-III**
|            |                                            | **Illinois Central Railroad v. Illinois** (U.S. Supreme Court 1892) |
|            |                                            | **National Audubon Society v. Superior Court ("Mono Lake case")** (California Supreme Court 1983) |
|            |                                            | **McGarvey v. Whittredge** (Maine Supreme Court 2011) |
|            |                                            | **Rapanos v. United States** (U.S. Supreme Court 2006) |
|            |                                            | Reaction paper due by 6:00PM on the night before class. |
| Fri., Apr. 6  | MINI-PAPER #2                              | Mini-Paper #2 due by 6:00PM |
| Mon., Apr. 9   | Natural Resources: Endangered Species      | **TEXTBOOK, ch. 10—part IV**
<p>|            |                                            | <strong>TVA v. Hill et al.</strong> (U.S. Supreme Court 1978) |
|            |                                            | <strong>WOLD, HUNTER, &amp; POWERS, CLIMATE CHANGE AND THE LAW (2nd ed.)—</strong> <strong>excerpt on the Polar Bear</strong> |
|            |                                            | Reaction paper due by 6:00PM on the night before class. |</p>
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<tr>
<td>Mon., Apr. 16</td>
<td>PATRIOTS DAY—NO CLASS</td>
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| Mon., Apr. 23 | Natural Resources: Fisheries              | ☐ Natural Resources Law and Policy (James Rasband et al. eds, 2d ed. 2009) – read excerpted ch. 5, but the cases at the end of the reading are optional.  
☐ Alec MacCall, A Non-Technical Explanation of the Groundfish Disaster, in The Rockfishes of the Northeast Pacific 90-91 (Love et al., 2002)  
☐ Reaction paper due by 6:00PM on the night before class. |
| Mon., Apr. 30 | Environmental Impact Statements; Wrap-Up  | ☐ Textbook, ch. 12  
☐ Cape Cod Nat’l Seashore & Herring River Restoration Comm., Herring River Restoration Project – Final EIS/EIR (May 2016) – read Executive Summary; skim the rest for an understanding of how an EIS is structured and its utility  
☐ Reaction paper due by 6:00PM on the night before class. |
| Fri., May 11 | MINI-PAPER #3                               | ☐ Mini-Paper #3 due by 6:00PM.                                             |