

**ENVS 285 SYLLABUS**

**TUFTS UNIVERSITY**
Spring 2019
Earl W. Phillips, Jr.

**Class I – Introduction**
(January 17)

**INTRODUCTION TO COURSE**

Coverage and Approach

Class Rules (and name cards)

Grading

- Exam (30%)
- Small Project (10%)
- Class Attendance/Participation (25%) – Do the readings for the class in advance!
- Final Hearing (35%)

**INTRODUCTION TO ENVIRONMENTAL LAW**

Some basics

- Law
- Environment

Important principals/terms to discuss:

- Constitution, Commerce Clause, Standing, Preemption, Police Power, Eminent Domain, Due Process, Environmental Common Law, Nuisance, Trespass, Negligence, Riparian Rights (Handout)

Introduction to Major Federal Programs (PowerPoint)

Reading -

*Whalen v. Union Bag & Paper Co.* (Handout)

*Madison v. Ducktown* (Handout)

*Boomer v. Atlantic Cement Co., Inc.* (Handout)
Class II - Common Law
(January 24)

WHERE DO THINGS STAND?

Environmental Problems and Progress (text pp. 2-7)
Economics and the Environment (text pp. 26-32)
Price and Markets
Cost/Benefit
Rachel Carson Excerpt (ONLINE)
The Tragedy of the Commons (text pp. 50-51)
*Examples
ANWR Exercise (text pp. 53-60; + two ONLINE articles)

SOURCES OF ENVIRONMENTAL LAW - COMMON LAW

Private Nuisance (pp. 62-68)
  Boomer v. Atlantic Cement Co., Inc. (ONLINE)
  Spur Industries, Inc. v. Del E. Webb Development Co. (ONLINE)
Public Nuisance (text pp. 76-78)
  Missouri v. Illinois (text pp. 78-81)
Private vs Public
  Petsey v. Cushman (ONLINE)

Water: Common Law – Surface Water
  Prior Appropriations and Riparian Rights
    “Introduction to Water Law” by Matthew Lane Crowell (ONLINE)
    Stratton v. Mt. Herman Boys’ School (ONLINE)
Water: Common Law – Groundwater
  See VIII. B.2. and 3. of outline below (ONLINE)
Stream Bed
  PPL Montana v. Montana (ONLINE portion)

OPTIONAL READING
1. Common Law re Environmental Law
   http://connect.michbar.org/envlaw/reports/deskbook/chapter13
Class III – Federal Env’l Law and Constitutional Issues –
Standing, Due Process, Preemption, Takings
(January 31)

FEDERAL ENVIRONMENTAL LAW
  Significant Federal Environmental Law (pp. 93-100)
  Regulatory Options (pp. 148-149)
  Types Of Regulation (pp. 154-158)

CONSTITUTIONAL ISSUES
  “Constitutional Issues in Environmental Policy” from Environmental Law and Policy by
  J. Salzman and B.H. Thompson, Jr. (ONLINE)
  Standing (pp. 111)
    Sierra v. Morton (pp. 111-114)
    Standing . . . (pp. 115-117)
    Mass. v. EPA (pp. 117-120)
    Connecticut Environmental Protection Act (“CT EPA”) (Conn. Gen. Stat. § 22a-14 et seq.) (ONLINE)
    Manchester Environmental Coalition v. Stockton (ONLINE, pp. 4-8)
    Should Trees Have Standing? (ONLINE)
  Due Process
    Grimes v. Conservation Comm’n (ONLINE)
  Preemption (pp. 100-102)
    International Paper v. Ouellette (pp. 102-103)
  Regulatory Takings and Inverse Condemnation
    QUIMBEE VIDEO (in class)
    Lost Tree (from Texas Agricultural Law) – (ONLINE)

OPTIONAL READING
  Due Process Challenges In Environmental and Natural Resources Law
  By Robin Kundis Craig (ONLINE)
Class IV – NEPA & CEPA, Endangered Species Act
(February 7)

NATIONAL ENVIRONMENTAL POLICY ACT (“NEPA”)

NEPA – [Supplement (pp. 1049-1054) (ONLINE)]
NEPA Regulations – [Supplement (portions of pp. 1055-1076)]
§§ 1500.1-1500.2; 1500.6; Part 1501 (all); 1502.1-1502.6; 1502.13-1502.16; 1502.23-1502.24; Part 1503 (all); Parts 1505-1506 (all); Part 1508 (all)

CONNECTICUT ENVIRONMENTAL POLICY ACT (“CEPA”) (ONLINE)
(focus on 22a-1a. to 1i.)

NEPA (pp. 895-898)
Calvert (pp. 898-901)
What Circumstance (pp. 905-907)
Timing and Scope (pp. 911)
Kleppe v. Sierra Club (pp. 911-915)
Whether/what (pp. 932-936)
Significance (p. 936-937)
Winter v. NRDC excerpt (ONLINE)
Epilogue (pp. 973-976)
Post Trump Proposals (TBD – ONLINE)

ENDANGERED SPECIES ACT (“ESA”)

ESA - Supplement pp. 1077-1079)
TVA v. Hill (pp. 987-991)
Gibbs v. Babbit (pp. 1002-1006)
Which Species (pp. 1009-1017, 1028-1029)
Federal Action and Thomas v. Peterson (pp. 1029-1031)
Private Actions (pp. 1047-1053)
Recommendations (pp. 1067-1069)
NLEB USFWS Press Release and FAQs re Final 4d Rule (ONLINE)
NLEB USFWS Press Release and FAQs re Critical Habitat Not Prudent (ONLINE)
Northern Long Eared Bat WNS Zone Map and Range Map (ONLINE)
Post Trump Proposals (TBD – ONLINE)
Class V – Water  
(February 14)

CLEAN WATER ACT (“CWA”)

- Supplement pp. 823-826 and Skim Bold Headings (found between pp. 882 and 983); Skim read §1311(a) & (b); 1312(a); 1313(d)(1)(A)-(C); §1314(f) & (g) & (l); § 1341; §1342(a) and first paragraph of (b); §1344(a) and (e); §1362; §1365(a) and (b)

“WATERS OF THE US”

- EPA: BRIEF HISTORY OF DEFINING WOTUS (ONLINE)
- Riverside Bayview (pp. 673-676); Solid Waste Agency (pp. 678-681)
- Rapanos (pp. 682-690)
- Clean Water Rule Fact Sheet Summary (ONLINE)
- Clean Water Rule: Definition of “Waters of the United States” (ONLINE)
- Trump Administration: Proposed Definition of WOTUS and Picture (ONLINE)

Point Source (pp. 710-722)
Discharge of Pollutant (pp. 701-702)
Discharges from Point Source or Deposition? (CWA §1342 - Supplement p. 952)

- National Mining v. ACE (pp. 695-700)
- South Florida (pp. 702-705)
- NRDC v. Costle (pp. 710-715)
- Plaza Health (pp. 717-722)
- Conduit Theory – See ABA article (ONLINE)

Technology Based (pp. 725-728)
Toxics /Water Quality (pp. 728-730)
POTW(s) (pp. 737-740)

Municipal Stormwater (MS4) – (EPA Website ONLINE)
Water Quality (pp. 742-747)
State Water Quality (p. 757)
TMDLs (pp. 767-769)

- Summary of American Farm Bureau Federation v. EPA (ONLINE)

CONNECTICUT WATER DIVERSION POLICY ACT (CGS §§ 22a-362 to 22a-379) (ONLINE)
INLAND WETLANDS + TIDAL WETLANDS + AQUIFER PROTECTION (ONLINE)

OIL POLLUTION ACT

- Context: Excerpt from Cleaning Up by David Lebadoff (ONLINE)
- Oil Pollution Act of 1990 (ONLINE)

- Punitive Damages & Oil Pollution Act
- Exxon v. Baker (ONLINE)
- Summary of Deepwater Horizon “grossly negligent” decision (ONLINE)
- Post-Trump Policy Shifts (ONLINE)
- Congress expands oil pollution act to reach spills originating outside U.S. (ONLINE)

SAFE DRINKING WATER ACT

- Summary (ONLINE)
- Definitions (ONLINE)

PRACTICE EXAM QUESTIONS
NO CLASS – (February 21)
Class VI – FIRST EXAM
(February 28)
Class VII – AIR  
(March 7)  

AIR  

Clean Air (pp. 523-526) and Supplement (ONLINE)  
Basic Principles (pp. 526-530)  
Major Provisions (pp. 532)  
Suggested optional supplement: those portions of the “Plain-English Guide to the Clean Air Act” that relate to the above (ONLINE, also available at https://www.epa.gov/sites/production/files/2015-08/documents/peg.pdf)  
Chart of CAA (Handout)  
Standing and What is an Air Pollutant (pp. 533-534)  
  Mass. v. EPA Standing: (ONLINE); Air Pollutant: (pp. 534-540)  

National Ambient Air Quality Standards (pp. 569-573)  
  LIA v. EPA – (pp. 573-575)  
  Whitman v. Am. Trucking Assn. (582-588)  

Attaining NAAQS (pp. 592-594)  
  Union Electric (pp. 594-596) – not economics  
  Alaska DEC v. EPA (pp. 602-607)  

Non-Attainment and PSD (pp. 608-617)  
  Env’l Defense v. Duke Energy (pp. 617-22 – SKIM ONLY)  

Multistate Air (pp. 637-640)  
  EPA v. E.M.E. Homer City Generation LP (Supplement pp. 1199-1214 – SKIM ONLY)  

Acid Deposition (pp. 628-631)  

Greenhouse Gases and the CAA (pp. 541-542)  
  UARG v. EPA (Supplement pp.1173-1187 and ONLINE)  
Post Trump Policy/Decision Shifts – TBD (ONLINE)
WASTE AND RCRA

What is a Solid Waste?  
*American Mining Congress v. EPA* (pp. 371-384)

What is Hazardous Waste?  
Identifying Hazardous Waste (pp. 384-387)

What is disposal?  
*Conn. Coastal Fisherman's Ass'n v. Remington Arms Co., Inc.* (ONLINE)

How AVOID TSDF (pp. 399-404)

RCRA’s “Imminent Hazard” Provision (pp. 410-411)

CERCLA

Context: Passaic River Fact Sheet (ONLINE)

General (pp. 411-415) and (Supplement pp. 463-464 and ONLINE)

Responsible Parties

Owners  
*Shore Realty:* (pp. 420-425)

Operators  
*Best Foods:* (pp. 432-436) – Parent  
*Aceto* (ONLINE)

Arrangers and Apportionment; Liability and Allocation  
*Burlington Northern* pp. 440-445

Contribution and Cost Recovery  
*Atlantic Research* pp. 466-470

Summary on Statute of Limitations (ONLINE)

A Note on Shrinking the Net of CERCLA Liability pp. 447-449

Strict, Joint and Several Liability, or Not (Divisibility)

Strict, Joint and Several Liability pp. 449-450

Gore Factors (ONLINE)

*Burlington Northern* Excerpt II pp. 451-456

BROWNFIELD + TRANSACTIONAL NEGOTIATION

See Brownfield Programs (ONLINE)
NO CLASS (Vacation) – March 21
Class IX – EPCRA, TSCA, REACH (+ Exam Prep)
(March 28)

EPCRA

EPCRA (pp. 339-347) (Supplement pp. 326-327)
EPA EPCRA Summary (ONLINE)
“The Emergency Planning and Community Right-to-Know Act (EPCRA): A Summary” by Linda-Jo Schierow (ONLINE)

TSCA/REACH

TSCA as amended by the Lautenberg Act (ONLINE) (Also available at: http://blogs.edf.org/health/files/2016/06/TSCA-as-amended-by-final-bill-6-22-16.pdf)
TSCA Reform Overview (ONLINE)
Emilee Mooney Scott, Chemical Regulation in the Laboratories of Democracy, Natural Resources & Environment, Spring 2015 (ONLINE)

MISCELLANEOUS UPDATES
Environmental Justice – Federal and Connecticut Program (ONLINE)
International Programs – (ONLINE)
Climate Change – (ONLINE)
Trump Update – TBD

EXAM PREP
Class X – EXAM + TEAM ASSIGNMENTS
(April 4)

- EXAM II

- Team Assignments and Work Session
Class XI – Discovery, Motions Argument, Hearing Prep
(April 11)

- Motions
- Discovery
- Hearing Preparation
Class XII – HEARING
(April 18)

- Hearing
Class XIII - HEARING
(April 25)

- Hearing
Exam Week
(TBD – May 2)

- Submit Recommended Decision