

ENVIRONMENTAL LAW
SYLLABUS
ANTONIN SCALIA LAW SCHOOL

G. Tracy Mehan III, Adjunct Professor

Course No. 218-001

3 Credits

6:05-7:30pm, Tuesdays and Thursdays

Spring 2023 Semester

Required Texts:

Environmental Law in Context: Cases and Materials, Fifth Edition by Robin Kundis Craig (West Academic Publishing 2022)

The Making of Environmental Law by Richard J. Lazarus (The University of Chicago Press 2004) (If a paperback edition is available, that will be fine. GTM)

Recommended Text:

Environmental Law and Policy, Fifth Edition by James Salzman and Barton H. Thompson, Jr. (Foundation Press 2019)

Grading will be based on a 100-point basis allocated as follows: 25 points for a review essay of the Lazarus book and 75 points for the final exam.

The review essay will be due on Midnight, Sunday, April 16th with a student presentations and discussion on Tuesday, April 18th. The review essay should be no more than 1,000 words using Times New Roman 12 point type, double-spaced, with the student's name on each numbered page.

Student Learning Outcomes include:

1. Learning the basics of the major environmental statutes on the books since the 1970s including consistency with and departure from common law principles;
2. Understanding fundamental legal concepts in environmental law including the difference between technology-based and results-based (e.g. health-based) standards as well as information-based approaches; cooperative federalism; and
3. Application of administrative law concepts to environmental regulation including notice and comment, deference, citizen suits and standards of review; and

4. A sense of the ongoing tension in environmental policy carried over into environmental law and regulation, e.g., benefit-cost analysis, trade-offs, disparate impacts and federal-state relations.

Class dates and assignments are below including pages in textbook to be read or skipped as indicated.

January 17

Chapter 2, Environmental Procedures and Judicial Review: NEPA and the APA

pp. 383-406

To be read for your own edification:

Chapter 6, Environmental Citizen Suits and the U.S. Constitution

pp. 1307-1327

January 19

Chapter 2, pp. 406-458

January 24

Chapter 2, pp. 459-508

Do NOT read pp. 508-516

January 26

Chapter 3, Protecting Endangered and Threatened Species in the United State and Globally

pp. 517-553

January 31

Chapter 3, pp. 553-599

February 2

Chapter 3, pp. 600-667

Students should NOT read, pp. 667-717 unless personally inclined. Will not be necessary for final exam.

February 7

Chapter 4, The Clean Air Act, the Risks of Pollution, and the Costs and Benefits of Environmental Regulation

pp. 719-772

February 9

Chapter 4, pp. 772-824

Chapter 4, pp. 863-887

February 16

Chapter 4, pp. 887-905

Do NOT read pp. 905-933

Chapter 4, pp. 933-946

Then read *West Virginia v. Environmental Protection Agency*, 597 U.S. (2022) re “major question doctrine.”

February 21

Chapter 5, The Clean Water Act and Federalism.

pp. 999-1037

February 23

Chapter 5, pp. 1037-1069

Do NOT read pp. 1069-1091

Chapter 5, pp. 1091-1129

February 28

Chapter 5, pp. 1129-1155

Do NOT read pp. 1156-1191

Chapter 5, pp. 1191-1193

Do NOT read pp. 1193-1242

March 2

Chapter 5, pp. 1243-1286

Do NOT read, pp. 1287-1299

Chapter 5, pp. 1299-1305

March 7

Chapter 1, Environmental Law and the Common Law: Hazardous Waste, RCRA, and CERCLA
pp. 113-154 (RCRA)

March 9

Chapter 1 pp. 154-205

Do NOT read pp. 206-218

March 14 & 16

NO CLASS-SPRING BREAK

May be a good time to get cracking on *The Making of Environmental Law*. Review essay due
Midnight on Sunday, April 16th.

March 21

Chapter 1, pp. 218-257

March 23

Chapter 1, pp. 257-297

March 28

Chapter 1, pp. 297-326

March 30

Chapter 1, pp. 326-361

April 4

Chapter 1, pp. 361-381

Handout for next class discussion: Des Moines CWA lawsuit pleading for final exam question.

April 6

Discuss Des Moines CWA lawsuit pleading and final exam question.

Catch up on course assignments, guest speaker, etc.

April 11

Chapter 6 (Again!), pp. 1379-1407

April 13

Chapter 6, pp. 1419-1431

****Review essays re *The Making of Environmental Law* due Midnight, Sunday, APRIL 16.**

April 18

Students present, discuss *The Making of Environmental Law*

Compare and contrast Clean Water and Clean Air Acts, cooperative federalism, technology-based versus results-based standards (health-based, water-based, Safe Drinking Water Act).

April 20

Last class!

Discuss environmental law in light of course and current circumstances, challenges, alternatives, etc.

Discuss final exam.

Abraham Lincoln on the practice of law

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