

Environmental Law for Non-Lawyers - ENST 594.05

Spring 16
JRH 204
12:40-2:00 Tu & Th

Professor: Len Broberg Office Hours: M 10-1130 am, Th 2:15-3:30 pm
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Course Content & Purpose

This course is designed to introduce non-lawyers to the laws, procedures and legal institutions that influence environmental regulation. The course aims to provide activists with the information they need to know to advance their campaigns and evaluate potential strategies in legal forums. There will be a mix of presentations and discussion about the course topics. Basic advocacy skills will also be emphasized in the course. Graduate students have the option of 1) pursuing a project with an outside organization involving the interpretation/analysis of legal issues which will be used by that group in a campaign (qualifies for engagement credit) or 2) taking a midterm and writing a paper on a topic relevant to the class involving legal research. The election of option must be made by February 23rd in writing to the instructor. Undergraduates are required to do option 2. Once an election is made the student is not able to change the option selected. Students will make a final presentation to the class on their paper topic/project\ on April 28th through May 10th.

Texts: 1) Environmental Law & Policy: Nature, Law, and Society, Plater, Abrams & Goldfarb all pages below are based on the 4th edition
2) Moodle materials (designated below as *Moodle*)
3) Cases or Law Reviews through the Mansfield Library databases (Lexis Academic or LegalTrac for instance)- designated *Lexis* on syllabus

Tentative class schedule:

- Jan. 26 Class Intro & Federal and State court structure
- Jan. 28 Introduction to federal administrative structure and administrative law
 - Read: PAG 217-227
- Feb 2-4 Standing/Reviewability issues
 - Read: **Moodle:** *Ohio Forestry Association, Massachusetts v. EPA (Through Section IV), Gwaltney update & Norton v. SUWA,*
 - **Lexis:** *NRDC v. United States Department of State, DC Dist of Columbia 2009, 658 F Supp 2d 105*
 - PAG 227-266
- Feb 9 Law Research session- during this period we will cover legal research

- Feb 11 National Environmental Policy Act
 - Read : PAG 319-345
 - **Moodle:** *NEPA process Overview, Roadless Rule reinstatement case, Keystone pipeline case*
- Feb 16 Guest speaker- Local regulation to limit fracking
- Feb 18 TBA
- Feb. 23 -25 National Forest Management Act:Forest Planning and Federal Land Policy Management Act: Grazing management
 - Read: **Moodle**-Houck, *Law of Biodiversity; Forest Service Regulations;* and
 - *Ecology Center v. Austin and Lands Council v. McNair*
 - PAG 382-403
- March 1 Endangered Species Act
 - **Moodle:**, *Sierra Club v. Glickman, Alabama Beach Mouse case;* and *NWF v. Babbit* PAG: 427-445
- March 1 **Project Description Due for Option #1**
- March 3 Climate Change- International Law PAG 950-974
- March 8 Cap and Trade- PAG 607-641
- March 10 Clean Air Act-*Massachusetts v. EPA (Section V to end)* PAG: 465-497
 - **Midterm handed out-Issue brief proposals due**
- March 15 Clean Air Act (contd)
 - Read: PAG 498-515
- March 17 Coal plant permitting under CAA **Midterm due**
- March 22 Constitutional limits on regulation (takings, "wise use" & police power)
 - Read: PAG 904-928
 - **Moodle:** Meltz et al, *Takings*
- March 24 Clean Water Act- Non-point pollution regulation
 - Read: **Moodle:** *ONDA case* PAG 523-568
- March 29 Toxics (RCRA & FIFRA)
 - Read: PAG 743-772, 647-678
- March 31 Collaboration: The Good, the Bad, and the Ugly
- April 5-7 Spring Break- No class
- April 12 **Midterm due back /Interim Project Report due**

- April 12 Toxic Torts & Environmental Justice
 - Read: PAG 374-378, Moodle: Manaster
- April 14 Modern Environmental Law: Policy, Politics, Personalities and Law- Part I – Guest Speaker Leon Billings
- April 19 Modern Environmental Law: Policy, Politics, Personalities and Law- Part II
- Apr. 21 Mining Law- **Moodle:** Wilkinson- *Mining Law*; *Montana Mining Law*; *MEIC v. DEQ*
- Apr. 26 Attorneys fees- **Moodle:** *Buckhannon et al*
- April 28- May 10 Student presentations (May 10 1:10-3:10 pm same room)
- May 5 **Projects or issue brief due**

In addition to the readings assigned on the syllabus there will periodically be other readings or materials to review Moodle.

Student Projects- Option 1

Environmental groups will submit proposals for projects that involve a legal issue or you will develop your own project that involves an outside group and the instructor approves. By working on these projects you will:

- 1) Gain skills in analyzing legal issues.
- 2) Gain experience researching legal questions.
- 3) Do something useful for the environment and democracy.
- 4) Satisfy the engagement requirement (if you are first year EVST student that took Foundations of Change)

You will select a proposal to work on or find your own project with an outside group approved by the instructor by February 23rd. There will be three written reports due at the following stages of your project:

Stage 1 (Due March 1)

This report will be a project description that will identify the group you will be working with, the legal issues involved in your project and their importance to the group.

Stage 2 (Due April 12)

This report will summarize the legal issues involved and your interpretation so far.

Stage 3 (Due May 5)

The final work product you will produce for your group. Final presentations will be done on April 28th through May 5th.

Action plan/daily journal

In a daily journal format you will record the steps taken to select and complete your project each day you work on your project. The journal will be a personal resource that tracks your work and a planning tool. About every two weeks you will turn in the journal and an action plan identifying the steps you will take in the next two weeks to complete the project so that the teaching staff can make suggestions and assist you to complete the project.

Action plan/ journal due dates:

March 1
March 15

Midterm and Issue Brief-Option 2

Students can choose to do a take-home midterm exam and issue brief for their grade in the class. The midterm will be several fact situations with questions for the student to answer that relate to the material covered in the course so far. Students may work on the exams in groups, however, each student must write their own answers to the questions in their own words (no repeated answers in the same words allowed from members of a group) and hand them in separately.

The issue brief will be an 8-9 page paper outlining a legal issue and reviewing the current law on the issue and interpreting it for a non-legal audience. Proposals for the issue will be due on March 15. The proposal will describe a legal issue and set the scope of the review (identify the type and breadth of sources for the review). Proposals will be reviewed and comments made by the instructor. The final brief is due May 5. Students will present their issue brief in the presentation period between April 26 and May 12.

Grading

Project students:

Project 70%
Class Participation 30%

Paper students:

Midterm exam 30%
Issue Brief 40%
Class Participation 30%

Course Goals

Goals of the course are to:

1. Understand the role of agencies, the legislature and judiciary in creating, interpreting and implementing environmental law.

2. Understand what language in particular contexts forms the basis for enforcement of environmental law.
3. Understand the role of discretion in agency action and the view of the court system of agency action.
4. Understand the enforcement and implementation process of major environmental laws.
5. Understand how environmental law can effectively be used in problem-solving.
6. Cover the content of several major federal environmental laws and the policy behind them.
7. Develop oral and written communication skills relating to legal and administrative issues.
8. Empower students to be positively engaged in the environmental policy and legal process.
9. Learn and develop legal research skills.

Student Expectations

Students by the end of the course will be expected to:

1. Be able to independently find outside legal sources and properly reference them.
2. Structure a logical argument or analysis incorporating legal references/sources as support. Students should be able to apply and use the issue, rule, analysis and conclusion framework of writing about legal issues.
3. Students should be able to translate complex legal material to a broader public audience in an understandable way in writing and orally.
4. Have knowledge of major environmental laws and their most important provisions from a practical, problem-solving standpoint.
5. Know how to productively participate in legal/administrative proceedings.
6. Coherently and concisely lay out a position on a legal issue in writing.

Disability Accommodation

Students with disabilities may request reasonable modifications by contacting me. The University of Montana assures equal access to instruction through collaboration between students with disabilities, instructors, and Disability Services for Students. “Reasonable” means the University permits no fundamental alterations of academic standards or retroactive modifications.

Academic Honesty

All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or disciplinary sanction by the University. All students need to be familiar with the [Student Conduct Code](http://www.umt.edu/vpsa/policies/student_conduct.php) : (http://www.umt.edu/vpsa/policies/student_conduct.php).