

## **Environmental Law**

PU EN AF-378/578

Fall 2009

Prof. Denise Scheberle  
Office: MAC 306B Ph. 2198  
Office Hours: TR 2:00 to 3:30 p.m.  
and by appointment

TR 12:30 to 1:50 p.m.  
MAC 204

### **Objectives of the Course:**

This course has three major learning objectives. First, the course provides students with a basic understanding of many of the major environmental laws that are currently in place. Equally important, the course offers insights into the implementation of environmental laws, regulations or programs and long-standing and emerging issues in environmental law. The course also examines the role of judicial decisions in environmental policy, state delegation, and the importance of policy history, context and enforcement to successful outcomes. Finally, this is a fun class designed to get you thinking!

Note that this course is **not** one focused exclusively or even primarily on case law. It is **not** designed to prepare you for a career as an environmental attorney. Rather, you should leave the course with a working, general knowledge of key environmental laws and cases but, more important, an appreciation for the way in which environmental laws develop, are implemented (or not implemented), enter the legal arena, and ultimately affect citizens, industries, state and local governments. You should also leave understanding the essential role citizens play in influencing the implementation of environmental laws.

### **Format of the Course:**

Course sessions contain a mix of lectures, readings, case law, case studies, and large and small group discussions. Lectures are designed to introduce major statutory provisions, as well as highlighting central issues surrounding environmental law. Readings, cases and case studies provide the opportunity to apply various legal requirements to real situations in order to work through various issues. Class discussions focus on the legislative and implementation histories of particular environmental laws, the current status of new programs, legislative reauthorizations or pending amendments, and reflections on the history or future of environmental programs. I rely on your active participation to make the class interesting and more meaningful.

**Textbooks for the course:** Two books and a number of ancillary readings are required for the course: Scheberle, Denise, Federalism and Environmental Policy: Trust and the Politics of Implementation (Washington, D.C.:Georgetown University Press, 2004); and Salzman, James and Barton Thompson, Environmental Law and Policy (New York: Foundation Press, 2003).

Recommended for students aspiring to careers in environmental management is Sullivan,

Thomas P. (Ed). Environmental Law Handbook (Rockville, MD: Government Institutes—any recent edition will work).

Additionally, students are expected to access, print, read and bring to class on-line materials as assigned for discussion (see reading schedule). You may bring a laptop to access these materials during class, but should have read them carefully before we discuss them. Most readings are in the content section of the D2L site. Please note, too, that readings may change from time to time, so please check with a classmate or with me if you miss a class. Since we'll include current events, you should scan the local or national newspapers for news related to environmental laws.

### **Method of Evaluation:**

This is a writing emphasis course. Students are evaluated by their performance in three areas:

1. Take-home, open book, open note midterm and final. You'll choose from a list of questions and prepare careful, well-reasoned responses. You'll be given the questions at least one week in advance of the date due (see schedule below), and questions will be drawn from readings, lectures and class discussions. Your typed responses to the questions you choose should be submitted in .doc (word) or .rtf (rich text file) format in the D2L dropbox no later than the date of the exam. Late submissions will be reduced by at least one letter grade if submitted up to one week late; but could be reduced by two letter grades if the exam is more than a week past due. The midterm and final together contribute 50 percent of the grade (25 percent each).

2. Individual or team research project. Working alone or partnering with other students, you will research a national or state environmental law, project or program that we do not discuss in class, or provision of an environmental law that we do. You'll prepare both a paper and a short oral presentation of your work. Oral presentations begin in early November and continue through the rest of the semester. You should be prepared to discuss your research on the day assigned. Your research paper (8-12 pages), double-spaced, typed, and with appropriately cited references is due on December 8. You are also required to submit two one-page status reports that update me on the progress of your research, as noted on the syllabus. Your paper and brief oral discussion as part of a class discussion contributes 30 percent of the grade. (See last page of the syllabus for more information.)

The research paper is evaluated based upon the extent to which the following criteria are met:

- responded to all aspects of the assignment (see last page)
- accurately describes the law or policy and identifies implementation factors
- carefully organized and presented, free of grammatical errors and properly cited using a recognized citation style. Review the link available on the Library home page.

The oral presentation should be limited to 5-10 minutes, and provide a good overview of the law, policy or program you are researching. *Do not simply read from your notes.* If more than one student is working on a law, you should coordinate your presentations to avoid overlap. If

working as a team of three or more, you may plan on 15 minutes for the presentation. Late assignments will be reduced by at least one letter grade.

3. Class participation. Your active and frequent participation is highly valued and contributes 20 percent of the grade. Many classes are devoted to applying what we've discussed to readings or "real life" materials. Participation is based on many factors, including your work during small group discussion, coming to class prepared, responses to small assignments and sharing news articles, attendance and your own evaluation of participation. NOTE: during small group discussion, we'll use focusing questions given in class or found in the weekly reading schedule.

Both undergraduates and graduate students may enroll in this course. Graduate students seeking graduate credit for the class will be evaluated separately from undergraduate students. Though no additional assignments are expected of graduate students in the course, their work is expected to be more polished, better researched, more comprehensive and better connected to implementation theory than that of their undergraduate counterparts.

**Anticipated weekly reading, assignment and discussion schedule**

Note: please check with me or a colleague if you miss a class, as the schedule may change.

WEEK OF

9/3 Introduction and orientation

9/8 Perspectives on environmental law Chapters 1&2 (Salzman)

Small group discussion: Read "Lessons from environmental collapses of past societies" Speech by Jared Diamond, Pulitzer Prize winning author, *pages 8-25*, and the Hardin essay on the Tragedy of the Commons, available in the content section of the D2L site. What are the main arguments of each essay? What lessons are most important? How do we best solve our own tragedy of the commons? How optimistic are you that we will avoid environmental collapse?

9/15 Implementing environmental law Chapter 1&2 (Scheberle)  
Environmental federalism

Small group discussion: Watch HOT POLITICS (chapters 3, 6 and 8), available on-line at <http://www.pbs.org/wgbh/pages/frontline/hotpolitics/>. (Click on watch the full program, then scroll to the chapters.) Listen to the MP3 back-story on global warming, read the news articles under environmental federalism, and read over the summary of the Massachusetts v. EPA case (all available in the content section of the D2L site). Why has the federal government been so slow to act on global warming? What does this suggest about the weaknesses and strengths of environmental federalism? What did the court say in the Massachusetts case?

9/22 Practice of environmental law Chapter 3 (Salzman)

Small group discussion: Describe and compare the causes of action in the three cases. Why were the results different in *Madison v. Ducktown* and in *GA v. Tennessee Copper*, even though the cases dealt with the same operation? What were the key differences between *Missouri v. IL* and *GA v. Tennessee*? Why are common law remedies alone inadequate to protect the environment (available in the D2L content section)? (You may also want to read the discussion of common law in *Sullivan*, or look at the extra materials in the content section.)

9/29 Resource Conservation and Recovery Act

Chapter 7 (Salzman)

Solid waste issues--violations of commerce clause

Small group discussion: Read the *C & A Carbone, Inc. V. Clarkstown* (1994) and the *Philadelphia v. New Jersey* (1978) cases. Read the "Recycling Wars" article from the *Environmental Law Forum* on the D2L site. How does the commerce clause affect solid waste policy in the United States? What has been the Supreme Court's view of the interstate movement of solid waste and flow control? Do you agree with the Court's interpretation? Why or why not? What are the most important points made in the "Recycling Wars" article? You also might enjoy the mp3 song about trash!

10/6 Citizen enforcement of environmental laws: Ballona wetlands film

Large group discussion Why is citizen involvement so important in enforcing environmental laws? How did citizens influence the course of events in the Ballona wetlands? What tactics did they use? Suppose you lead an environmental organization dedicated to protecting Wisconsin wetlands. What strategies would you use to be successful?

Implementation stories of asbestos and radon policy

Scheberle, C 3&4

Small group discussion: What surprised you about each law or its story? Who must comply with each law? What are the major elements of the law? What has been the implementation story and key constraints facing each one? What, if any, changes might you recommend? How political are these environmental programs? (Hint: use the implementation framework of extrinsic and intrinsic variables in Chapter 1 to frame your discussion.)

**First status report is due October 6.** On one typed page provide your topic, what information you have found to date, and at least three references.

10/13 Comprehensive Environmental Response,  
Compensation and Liability Act

Chapter 7 (Salzman)

Small group discussion: Read the *Oakdale* and *Forgotten Dumps* cases and the CRS report you'll find in the content section. Compare these two short cases dealing with hazardous waste. Which case was most successful? Why? What political, economic or organizational factors hindered

the effectiveness of the clean-up efforts? Read “Will Superfund Rise Again?” How does this compare to our situation in the Fox River? What implementation factors influence the implementation of CERCLA?

10/20 Clean Water Act

Chapter 5 (Salzman)

Small group discussion: Read the CRS Report on Clean Water Act issues available in D2L or archived at the National Council for Science and the Environment website (<http://www.ncseonline.org/>). What are the major implementation issues? How should Congress respond?

Small group discussion: Cranberries case study. Discuss what factors account for Ocean Spray’s indictment. Is this a case of intentional or unintentional harm? Does Middleboro bear responsibility for the pollution of the water resources? Does this case illustrate any shortcomings of the Clean Water Act?

**Second status report is due on 10/20.** On one or two typed pages, provide an update of your research project, including a list of additional references.

10/22: Presentation by Bill Oldenburg, Pretreatment Coordinator at GBMSD

10/27 Clean Water Act (topics continued)

Small group discussion: Read the SWANNC and Riverside Bayview Homes cases (available at <http://laws.findlaw.com/us/474/121.html> and <http://laws.findlaw.com/us/000/99-1178.html>), the other materials on wetlands provided on the D2L site, and the “Protecting Wetlands” section of Chapter 9 (Salzman). How does the court interpret wetlands regulation under section 404 of the Clean Water Act? Why are these cases and agency action important? How do they illustrate the complexity of wetland protection?

### **Midterm is due 10/29**

11/3 Clean Air Act

Chapter 4 (Salzman)

Small group discussion: Read the first 22 pages of a 2005 report *Pollution on the Rise*. What does the study suggest? Should we be concerned? Why or why not? What recommendations would you support? Do you have any other suggestions? Then, read Dian Ogilvie’s keynote address given to the National Conference on Science, Policy and the Environment at <http://ncseonline.org/ncseconference/2006conference/cms.cfm?id=796> (on D2L) What made Toyota think green? What are the implications for other car manufacturers?

11/5 Guest presentation by Rob Bermke, Georgia Pacific

11/10 Topics continue

first and second set of presentations (part of the class on 11/10 and 11/12)

11/17 Coal mining and drinking water

Scheberle Chapters 5&6

third and fourth set of oral presentations (part of the class on 11/17 and 11/19)

Small group discussion: What surprised you about each law or its story? How would you tell the story of these laws? What, if any, changes might you recommend? How political are these environmental programs? (Hint: use the implementation framework of extrinsic and intrinsic variables in Chapter 1 to frame your discussion.)

Watch the movie: HEAT on-line at <http://www.pbs.org/wgbh/pages/frontline/heat/> Chapters 4, 5, 6 and 9. Why “America is addicted to coal”? How can this addiction be broken?

11/24 fifth set of oral presentations Happy Thanksgiving on 11/26 (no class)

12/1 Presentation by Stefan Fabian, Environmental Warden, DNR on environmental enforcement

12/3 NEPA and Endangered Species Act

Chapter 9&10 (Salzman)

Small group discussion: Read the Tellico Dam case and the Babbitt v. Sweet Home case. What was the court’s decision? Why are these considered such an important cases? What does the Sweet Home case reveal about the strengths and weaknesses of the ESA? How do these cases relate to the listing of the polar bear? Read two NEPA case studies from the NEPA Handbook on collaboration. Come prepared to discuss those cases and continue our discussion of NEPA and ESA.

12/8 Putting it all together and continued topics

sixth (and seventh, if needed) set of oral presentations (12/8 and 12/10)

Small group and class discussion: Read the speech “Choosing our common future: democracy’s true test” by William Ruckelshaus, EPA’s first administrator, pages 8-25, available on D2L or. [<http://www.ncseonline.org/2005conference/05chafeereport.pdf>] and the “End of Equilibrium,” by Carl Bruch (on D2L). Do you agree with the observations made by these individuals? What is democracy’s true test? What is meant by adaptive management within (or despite) our current set of environmental laws? How do these readings relate to the one we read on environmental collapse by Jared Diamond?

**Final research papers are due December 8**

**Final exams are due December 17**

As required by federal law and UW-Green Bay policy, students with a documented disability who need accommodations must contact the Disability Services Office. Reasonable accommodations can be made unless they

alter the essential components of the class. Contact the instructor and Disability Services Coordinator in a timely manner to formulate alternative arrangements.

## **Guidelines for Individual/Team Research Projects for Environmental Law**

Working individually or collaboratively, you are expected to complete a research project on an environmental law, policy or program that we have not discussed *or* part of an environmental law that we have discussed, but that you want to look at more closely. You may choose either a federal or state law, but be sure that you have enough information to discuss the implementation of the program. Your work contains both a written and oral component. You discuss your research with your colleagues on the day assigned. On that day, you should be prepared to talk about your research: what you have learned (an overview), what has been the implementation issues (the challenges), and any key findings (lessons) that you have. Your presentation should be no more than ten minutes, so that there will be time for all presentations. On December 8, you submit an 8-12 page paper, double-spaced, and typed, with accurately cited references. You may choose to work in a group or individually, depending upon your preference. If you work as a team, the final report should be somewhat longer and reflect the contributions of all members.

All papers should contain the following sections (I suggest using headings to make sure you cover each section adequately):

**1. Discussion of the nature of the environmental problem, issue or concern addressed by the law or portion of the law.** This section should answer “why should we care?” by describing why the issue addressed by the law is important.

**2. Description of the law, or portion of law, regulation, program or policy.** This section should answer “what does the law/policy/program do?” You should aim for the central features of the law, rather than try to cover every detail. The research you choose may be a part of an existing federal or state environmental law, or it may be an entire law, as long as it is not one of the laws we discussed in class. In other words, you should *not* write a research paper on the entire Clean Air Act or the Clean Water Act. You could, however, write a paper on the TMDL provisions of the Clean Water Act or the Title IV provisions of the Clean Air Act. Other examples include: FIFRA; NWPA; TSCA; the Safe Harbor program under the ESA; the BEACH act; TSCA; CZMA; various natural resource laws such as the National Forest Management Act, Wild and Scenic Rivers Act or Wilderness Act.

**3. Analysis of the implementation of the law.** This discussion should answer two questions: “how is the law (or portion of the law) working?” and “what factors hinder or facilitate its implementation?” You should incorporate one or more of the implementation variables described in the implementation framework in the Scheberle text. This framework provides the theoretical basis for your paper. You should also provide information about recent proposed or final changes, if any.

**4. Your opinion about what should be done now, supported by scholarly or professional literature.** This section answers the question “where should we go from here?”

**An outstanding paper will carefully and completely address all of these elements, be well written and organized, provide adequate, appropriate and properly cited references, and contain fewer than four grammatical errors.**