

Environmental Law

PU EN AF-378/578

Fall 2006

Prof. Denise Scheberle

Tuesdays/Thursdays 12:30-1:45

Office: MAC 322A Ph. 2198

MAC 204

Office Hours: Mondays 10:30 to 1:00 and other times by appointment

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 and the issues that constrain major environmental programs. The course also examines the role of judicial decisions in environmental policy, 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** 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.

Format of the Course:

Course sessions contain a mix of lectures, problem exercises and case law, case studies, and discussions. Lectures are designed to introduce major statutory provisions, as well as highlighting central issues surrounding environmental law. Problem exercises, cases and case studies provide the opportunity to apply various legal requirements to real situations in order to work through various issues. Class discussions, in turn, will focus on the legislative and implementation histories of particular environmental laws as well as the current status of new programs, legislative reauthorizations or pending amendments. While I will lecture for some of the session, I rely on your active participation to make the class interesting and more meaningful.

Textbooks for the course: Two books 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). I've placed an earlier edition of the book on reserve at the library. Everyone should consider this handbook a more definitive treatment of our national

environmental laws than the texts. I encourage you to look it over, especially the section on common law.

Additionally, students are expected to access, print, read and bring to class on-line materials (see reading schedule) and to scan the local or national newspapers for news related to environmental laws. While most of this information is on the syllabus, readings may change from time to time.

Method of Evaluation:

Students are evaluated by their performance in three areas:

1. Written assignments. Written assignments are due at various times throughout the semester. You can choose **3 assignments out of the five listed** on the reading schedule. Assignments should be 3-5 typed double-spaced pages and submitted to the course D2L site in word or rich text format by the date due (no emailed assignments). Consider these “mini” research papers in that you’ll need to respond fully to the questions listed for the assignments by incorporating class lectures, discussions, and reading materials. You may add any other relevant information that you find in formulating a response to the assignment. Each assignment contributes 15 percent of the grade and is due on the date indicated.

2. Individual or team research project. Working alone or partnering with one or two other students, you will research a national or state environmental law 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. By December 21, you should submit your research paper (8-12 pages), double-spaced, typed, and with appropriately cited references. Your paper and brief oral discussion as part of a class discussion contributes 35 percent of the grade. (See last page of the syllabus for more information.) You are also required to submit two one-page status reports that update me on the progress of your research.

Papers and the research paper are evaluated based upon the following criteria:

- The extent to which the written work responded to all aspects of the assignment
- The extent to which the written work accurately reflects the case, law or policy
- The extent to which the written work is well organized, free of grammatical errors and properly cited

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, responses to small assignments, sharing news articles, attendance and your own evaluation of participation.

***Anticipated* weekly reading, assignment and discussion schedule (please check with me or a colleague if you miss a class, as the schedule may change:**

Come prepared to respond to the following questions: 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 is flow control? What are the arguments for and against flow control? Why is the Wisconsin legislature considering increasing its tipping fees?

10/3 Citizens enforcement of environmental laws: Ballona wetlands film
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. On one typed page provide your topic, what information you have found to date, and at least three references.

Written assignment #1 is due (remember, choose 3 of 5): Carefully discuss common law remedies (such as public or private nuisance and strict liability) available for environmental damages, using the three historic cases that we discussed in class, as well as the readings and other information that you may access (the Sullivan book will be very useful as well). What are the limitations and benefits of these common law remedies?

10/10 Comprehensive Environmental Response, Chapter 7 (Salzman)
Compensation and Liability Act

Small group discussion: Read the Oakdale and Forgotten Dumps cases. 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? How does this compare to our situation in the Fox River?

10/17 Clean Air Act Chapter 4 (Salzman)

Written assignment #2 is due: Discuss the Ballona case by responding to the following questions: 1) what is the issue? 2) why did people get involved in the issue and what techniques did they employ? 3) were they successful? Why or why not? 4) in what ways does this case highlight the importance of civic environmentalism and the limitation of environmental law?

10/24 Clean Air topics continue

Small group discussion: Print and read the first 22 pages of a 2005 report *Pollution on the Rise* [http://cta.policy.net/reports/pollution_on_the_rise.pdf] (link from <http://cta.policy.net/proactive/newsroom/release.vtml?id=25822>). 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> . What made Toyota think green? What are the implications for other car manufacturers?

10/31 Clean Water Act

Chapter 5 (Salzman)

Second status report is due. On one typed page, provide an update of your research project, including a list of additional references.

Written assignment #3 is due: Carefully discuss how RCRA and CERCLA work. (For example, how do I determine if I am regulated by RCRA? How do I determine if I am liable under CERCLA?) Choose *either* RCRA or CERCLA and respond to the following questions: In your opinion, how well has this law been implemented? What changes, if any, would you make to the law?

11/7 Small group discussion: Read the Congressional Research Service Report on Clean Water Act issues available at <http://www.ncseonline.org/NLE/CRSreports/06Jun/RL33466.pdf>, archived at the National Council for Science and the Environment website (<http://www.ncseonline.org/>). What are the major issues? How should Congress respond? 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?

First set of oral presentations (second half of class)

11/14 Topics continue (wetlands)

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>) 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?

11/16 Second set of oral presentations (entire class)

Written assignment #4 is due. Carefully discuss the major elements of the Clean Air Act and the Clean Water Act, including such elements as SIPs, wetlands, NAAQS, NPDES. What similarities and differences do you see? Choose one law, and answer the following questions: What are the challenges that remain to implementing this law? How could it be improved to get to cleaner air or water?

11/21 Release time for research projects

11/23 Happy Thanksgiving!

11/28 National Environmental Policy Act

Chapter 10 (Salzman)

11/30 Third set of oral presentations

12/5 Endangered Species Act

Chapter 9 (Salzman)

Small group discussion: Read the Babbitt v. Sweet Home case at <http://laws.findlaw.com/us/000/u10269.html>. What does the case reveal about the strengths and weaknesses of the ESA? For a good understanding of ESA, read the CRS overview at <http://www.ncseonline.org/nle/crsreports/06may/RL31654.pdf>

12/7 Fourth set of oral presentations

12/12 Putting it all together in 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. [<http://www.ncseonline.org/2005conference/05chafeereport.pdf>] Do you agree with the observations made by Mr. Ruckelshaus?

12/15 Fifth set of oral presentations

Written assignment #5 is due. Carefully compare the strengths and weaknesses of the Endangered Species Act and the National Environmental Policy Act. Which law do you feel is the most effective? Why? Which do you feel is the most in need of change? Why? What changes would you make to one of the laws?

12/21 Final research papers are due. Papers will be considered late if they are in the dropbox by midnight.

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 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, what have been the implementation issues, and any key findings that you have. Your presentation should be no more than ten minutes, so that there will be time for all presentations. On December 21, 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:

1. A 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. A description of the law, or portion of law, regulation, program or policy. This section should answer “what does the law 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. You could, however, write a paper on the TMDL provisions of the Clean Water Act or the New Source Review provisions of the Clean Air Act (CAA). Other examples include: FIFRA; the Safe Harbor program under the ESA; the federal BEACH act; TSCA; various natural resource laws such as the National Forest Management Act, Wild and Scenic Rivers Act or Wilderness Act.

3. An 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, and 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.