

**ENSP 330: Introduction to Environmental Law  
Fall 2016**

T/Th 11:00 a.m. – 12:15 p.m.  
TYD 1102

**Syllabus**

**Instructor:**

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**Office Hours:** By appointment on Tuesdays, Wednesdays, and Thursdays

**Course overview and objectives:**

This course is designed to provide students with an overview of environmental law – from its common law roots to its current role in the modern regulatory regime. The course will begin with a brief overview of the U.S. legal system generally in order to provide a framework for understanding the case law and statutory law presented throughout the course. The course will then examine the roots of environmental law - from its beginnings in the common law to the dawn of the environmental movement in the 1970s.

The environmental regulatory structure will then be placed in context through a discussion of the role of agencies, Congress, and the courts. Once these background principles have been established, the course will provide an introduction to case law interpreting the major federal environmental statutes that seek to control pollution and protect natural resources including the Comprehensive Environmental Response, Compensation, and Liability Act (the “Superfund Program”), Clean Air Act, Clean Water Act, Endangered Species Act, and National Environmental Policy Act. The course will also explore the civil and criminal enforcement of these laws, and the important role that citizens play in the enforcement process.

While the course focuses on U.S. environmental law, it will also introduce international environmental law, with particular emphasis on China’s role in combatting global climate change. The exploration of sustainability issues throughout this course supports the Chesapeake Project, an initiative of the Office of Sustainability.

The course will culminate with student debates on current issues in environmental law. Students will prepare for these debates by completing a writing assignment on their debate topic.

**Goals/learning outcomes:**

By the end of this course, students will be able to:

- Identify, describe, and analyze legal opinions by completing written “briefs” of environmental law cases
- Recognize the traits needed to succeed in law school and types of environmental law careers by attending a law school/law career panel and/or writing a reflection and evaluation paper

- Identify and understand the major environmental laws and major cases that interpret those laws by successfully completing a mid-term and final exam
- Analyze major environmental laws and case law applicable to a current environmental issue by writing a legal memorandum or brief
- Defend a position on a current environmental issue by participating in an oral debate

### **Required Course Materials:**

PERCIVAL, SCHROEDER, MILLER & LEAPE, ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY (Aspen, 7th ed. 2013). (ISBN 978-1-4548-2228-8)

All other materials will be available through the ELMS Canvas System, <http://elms.umd.edu> or on Web links provided on the list of reading assignments below. To access book excerpts in ELMS, go to the Course Reserves tab in ELMS. Articles can be found at the Files tab in ELMS. These materials will be designated with "ELMS" in the list of assignments below. Web links should be self-explanatory.

In addition, our class has access to the Environmental Law Reporter News & Analysis as well as weekly case updates. These materials will be made available to you throughout the semester.

### **Class preparation:**

The course is organized in a seminar format, with lectures supplemented by discussion of assigned readings and in-class problem exercises. **The readings will be a primary topic of discussion during class, so students should come prepared to discuss the assigned readings. To ensure reading is completed in advance of class, students will be required to complete case briefs in advance of class.** More details about these briefs will be provided. This course will require an average of 6-9 hours of out-of-class reading, research and/or writing each week. As you read, take your time, and read twice if necessary. Focus your attention on the cases and introductory material. Students will occasionally be assigned Problem Exercises in class. Student groups will discuss the Exercises and will be responsible for reporting their findings and conclusions to the rest of class. The assigned readings will help students to be prepared for these exercises.

### **E-mail List/ELMS:**

An e-mail list will be set up for this class through the ELMS/Canvas System. E-mail addresses are pulled from the University Directory listing. Please be sure that your preferred and current e-mail address is listed in the Directory. You can check and update this information by going to Testudo ([www.testudo.umd.edu/apps/saddr/](http://www.testudo.umd.edu/apps/saddr/)). I will be posting course documents and information on the ELMS/Canvas system, so it is important that you use this system and that you are checking your e-mail for any announcements or assignments. **Please note that I will communicate with the class through e-mail and ELMS regarding any class cancellations, changes in meeting times, or room changes.**

## Course Requirements and Grading:

You will have the opportunity to earn up to 1000 points based on the following:

<u>Assignment</u>	<u>Points</u>	<u>Due Date</u>
Case briefs	70	All semester
Memo Topic Due		Tu Oct 4
Exam practice assignment	20	Th Oct 6
Mid-term exam	250	Tu Oct 11
Library Research assignment	25	Th Oct 27
Memo rough draft	20	Th Nov 3
Memo assignment	250	Tu Nov 22
Debates	50	Tu Nov 22-Tu Dec 6
Debate reflection	15	Th Dec 8
Final exam	275	Wed Dec 14
Student participation	25	
Total Points	<u>1,000</u>	

Your total grade is out of 1000 points. Grades will be awarded by converting the points earned into a percentage. 100-98% = A+, 97-92 = A, 91-90 = A-; 89-88 = B+, 87-82 = B, 81-80 = B-; 79-78 = C+, 77-72 = C, 71-70 = C-; 69-68 = D+, 67-62 = D, 61-60 = D-;  $\leq 59$  = F. You are advised to keep all graded work throughout the semester in case you have a question about your final course grade. Also, keep a personal record of your accumulated points as the semester progresses.

You may calculate your percentage grade at any time during the semester by dividing the number of points earned by the number of points possible at that point in the semester. Please see me if you have any questions.

Papers and homework assignments must be submitted **through ELMS** (except case briefs which will be submitted in hard copy) and unless you see me in advance of the due date and obtain an approved excuse, 5 percent of the total possible points will be deducted from your score for every day the homework or paper is late, including weekend days. (So, for example, on a 100-point scale, a student who would have earned a 94 on a timely paper will earn 89 if the same paper is turned in one date late, 84 if turned in 2 days late, etc.).

If you would like to **appeal any grade** that you have received in this course, you may file an appeal within one week of the return of the assignment. Please submit the entire exam, homework, or paper and attach a typed explanation of the reason why you think your grade should be changed.

### Memo and Debate:

This assignment will involve each student in an analysis and discussion of a current issue in environmental law. Students will have the opportunity to choose from a list of topics related to an issue of current environmental significance. There will be 4 students assigned to each of the topics. Each student will work individually on researching and writing on the topic. Each group of 4 students will then be divided into 2 teams of 2 for purposes of conducting a debate/oral argument on the topic. 2 students

will take the position of each side of the debate. Further details about this assignment will be provided in class.

Rough drafts of memos will be due **Thursday November 3**. Final memos will be due on **Tuesday, November 22**. Debates will be held on **Tuesday November 22, Tuesday November 29, Thursday December 1, and Tuesday December 6**. In addition to participating in your own debate, you will also be asked to evaluate/reflect on the other debates.

### **Homework:**

There will be one ongoing assignment and three additional homework assignments this semester. Students will complete case “briefs” “**CBs**” throughout the semester (70 points), an exam practice assignment (20 points), a library research exercise (25 points), and a reflection/evaluation exercise related to the debate assignment (15 points). More details about each of these assignments will be forthcoming.

### **Course Related Policies:**

Information on university-wide course policies can be found at:

<http://www.ugst.umd.edu/courserelatedpolicies.html>. Please let me know if you have questions about these policies.

Topics include:

- **Academic Integrity** What is cheating? What is plagiarism? What is the Honor Pledge?
- **Code of Student Conduct** What behavior is prohibited?
- **Sexual Misconduct** What to do in case of sexual harassment or sexual assault.
- **Discrimination** Procedures to prohibit discrimination, complaints about discrimination, harassment, and retaliation.
- **Accessibility** Information about disability support accommodations.
- **Attendance, Absences, or Missed Assignments** Read this prior to Schedule Adjustment date. **Please note: Students claiming an excused absence must (1) apply in writing and (2) furnish documentary support for their assertion that absence resulted from one of these causes.**
- **Student Rights Regarding Undergraduate Courses** What should I find in the course syllabus? Am I allowed to see my exams after they are graded?
- **Official UMD Communication** Use of email, communication with faculty, communication about cancelled class meetings, and weather-related or other urgent notifications.
- **Midterm Grades**
- **Complaints About Course Final Grades**
- **Copyright and Intellectual Property** Who owns the work that I produce in class.
- **Final Exams and Course Evaluations**
- **Campus Resources** ELMS, counseling, learning workshops, tutoring, writing help, etc.

Week #	Date	Topic	Reading (to be completed <i>before</i> today's class)	Activities, Assignments and Guest Lecturers
1	Tues. 8/30	Intro to the Course, Review of the Syllabus, Intro to the U.S. Legal System	Review the syllabus	
	Th. 9/1	Intro to Environmental Problems/Intro to the U.S. Legal System	Percival, Environmental Regulation, pp. 1-7, 61-63 Breyer, Making our Democracy Work, Appendix B, pp. 228-232 (ELMS, Course Reserves, p. 37-41 of pdf) The Constitution, <a href="http://www.senate.gov/civics/constitution_item/constitution.htm">http://www.senate.gov/civics/constitution_item/constitution.htm</a>	
2	Tues. 9/6	Common Law Roots of Environmental Law	Percival, Environmental Regulation, pp. 63-73, 76-89	Case Briefs Assignment Handed Out
	Thurs. 9/8	Regulatory Legislation in Historical Perspective/Statutory Interpretation	Percival, Environmental Regulation, pp. 89-100 (skim) Breyer, Chapter 8, pp. 88-102 (ELMS, Course Reserves, p. 4-18 of pdf)	
3	Tues. 9/13	Standing to Sue	Percival, Environmental Regulation, pp. 111-122	CB Due
	Thurs. 9/15	Standing to Sue	Review readings from last class	<u>In-Class Standing Exercise</u>
4	Tues. 9/20	The Commerce Clause	Percival, Environmental Regulation, pp. 131-136, 1002-1009	CB Due
	Thurs. 9/22	Judicial Review and the Regulatory Process	Percival, Environmental Regulation, pp.168-172, 183-190 Breyer, Chapter 9, pp. 106-120 (ELMS, Course Reserves, p. 22-36 of pdf)	CB Due
5	Tues. 9/27	Waste Management – CERCLA	Percival, Environmental Regulation, pp. 411-417, 420-427, 438-447 <b>**Memo &amp; Debate Assignment Distributed and Explained</b>	CB Due
	Thurs. 9/29	Water Pollution Control: Clean Water Act	Percival, Environmental Regulation, pp. 667-668, 694 at top, 717-725	CB Due Exam Practice Assignment Handed Out

Week #	Date	Topic	Reading (to be completed <i>before</i> today's class)	Activities, Assignments and Guest Lecturers
6	Tues. 10/4	Water Pollution Control: Clean Water Act	Percival, Environmental Regulation, pp. 672-692, <i>U.S. Army Corps of Engineers v. Hawkes Co.</i> , 136 S.Ct. 1807 (May 31, 2016) in Statutory and Case Supplement ( <b>ELMS, Course Reserves</b> ), Final Waters of the United States Fact Sheet, <a href="https://www.epa.gov/sites/production/files/2015-05/documents/fact_sheet_summary_final_1.pdf">https://www.epa.gov/sites/production/files/2015-05/documents/fact_sheet_summary_final_1.pdf</a>	<b>** Memo &amp; Debate Topic due via ELMS</b> <b>CB Due</b>
	Thurs. 10/6	Water Pollution Control: Clean Water Act  Mid-term review	CPR Case Brief, <i>American Farm Bureau Federation v. U.S. EPA</i> , ( <b>ELMS, Files, Readings</b> )	<b>Exam Practice Assignment Due</b> <b>**Memo &amp; Debate Topics Assigned</b>
7	Tues. 10/11	<b>MIDTERM EXAM</b>		
	Thurs. 10/13	Legal Writing and Research	Review ENSP 330 Library Research Page, <a href="http://lib.guides.umd.edu/ensp330">http://lib.guides.umd.edu/ensp330</a>  Review Cornell Guide to Basic Legal Citation, <a href="http://www.law.cornell.edu/citation/">http://www.law.cornell.edu/citation/</a>	<b>Judy Markowitz,</b> <b>Government and Politics Librarian</b>  <b>Class will meet in 6107 McKeldin</b>  <b>Library research assignment handed out</b>
8	Tues. 10/18	Career Panel	No reading	
	Thurs. 10/20	Clean Air Act and Mercury emissions	Percival, Environmental Regulation, pp. 523-532, Environmental Law Statutory and Case Supplement, <i>Michigan v. EPA</i> , (June 29, 2015) ( <b>ELMS, Course Reserves</b> )	<b>CB Due</b>
9	Tues. 10/25	Clean Air Act and Climate Change	Percival, Environmental Regulation, pp. 533-546, TBA from <a href="http://www2.epa.gov/cleanpowerplan">http://www2.epa.gov/cleanpowerplan</a>	<b>CB Due</b>
	Thurs. 10/27	Catch up day – Discuss legal research and writing, review exam	No reading	<b>Library assignment due</b>

Week #	Date	Topic	Reading (to be completed <i>before</i> today's class)	Activities, Assignments and Guest Lecturers
10	Tues. 11/1	International Climate Change Law	Fact Sheet: <a href="http://www.whitehouse.gov/the-press-office/2014/11/11/fact-sheet-us-china-joint-announcement-climate-change-and-clean-energy-c">http://www.whitehouse.gov/the-press-office/2014/11/11/fact-sheet-us-china-joint-announcement-climate-change-and-clean-energy-c</a> Paris Agreement (ELMS, Files, Readings)	Guest Lecture, Robert Percival, University of Maryland School of Law
	Thurs. 11/3	Environmental Assessment: The National Environmental Policy Act	Percival, Environmental Regulation, pp. 895-911, 932-937, Washington Post Article on NEPA Climate Guidance, <a href="https://www.washingtonpost.com/news/energy-environment/wp/2016/08/02/from-now-on-every-government-agency-will-have-to-consider-climate-change/?utm_term=.ca5e6bad5e75">https://www.washingtonpost.com/news/energy-environment/wp/2016/08/02/from-now-on-every-government-agency-will-have-to-consider-climate-change/?utm_term=.ca5e6bad5e75</a>	Memo Rough Drafts due CB Due
11	Tues. 11/8	Protection of Biodiversity – The Endangered Species Act	Percival, Environmental Regulation, pp. 984-993, 1015-1016, 1049-1057	CB Due
	Thurs. 11/10	Protection of Biodiversity – the Endangered Species Act  Background on Debate Structure	Review Percival, Environmental Regulation, pp. 1049-1057	
12	Tues. 11/15	Citizen Suits and Civil Enforcement	Percival, Environmental Regulation, pp. 1122-1124, 1083-1086, 1092-1095 BP Settlement, <a href="http://www.justice.gov/opa/pr/statement-attorney-general-loretta-e-lynch-agreement-principle-bp-settle-civil-claims">http://www.justice.gov/opa/pr/statement-attorney-general-loretta-e-lynch-agreement-principle-bp-settle-civil-claims</a>	In-Class Discussion Exercise: Calculating a Civil Penalty  CB Due
	Thurs. 11/17	Criminal Enforcement	Barrett, Jane F., W. Warren Hamel, and Steven P. Solow, ABA, Environmental Litigation: Law and Strategy, Chapter 2, Environmental Criminal Enforcement, pp. 69-88 (ELMS Files, Readings, pp. 1-11 of pdf)	Possible Guest Lecture, Warren Hamel, Partner, Venable LLP

13	Tues. 11/22	Student debates	Group readings to be posted on ELMS	Memos due
	Thurs. 11/24	<b>NO CLASS THANKSGIVING BREAK</b>		
14	Tues. 11/29	Student debates	Group readings to be posted on ELMS	
	Thurs. 12/1	Student debates	Group readings to be posted on ELMS	
15	Tues. 12/6	Student debates	Group readings to be posted on ELMS	
	Thurs. 12/8	Wrap up and Final Exam Review	Study	Debate reflection due
16	Wed. 12/14	<b>FINAL EXAM – MAJOR SCHEDULED GRADING EVENT</b>	8:00 a.m. – 10:00 a.m.	