

School of Environmental and Biological Sciences, Rutgers University

## **Environmental Law and Policy 1: Nature, Law and Society 11:374:460, Fall 2017**

**Professor Cymie Payne**

### **Course Book:**

PLATER, ABRAMS, GRAHAM, HEINZERLING, WIRTH AND HALL, ENVIRONMENTAL LAW & POLICY (5<sup>th</sup> ed., 2016). Readings are in Plater et al. unless otherwise indicated; other assigned readings will be on the internet or Sakai. There are two related websites provided by the authors with supplemental materials:

- tracking deregulation by the Executive Branch
- other supplementary materials

On reserve at Chang Library, however, I highly recommend that you have your own copy. This is a class where success depends on doing the reading before the class lecture and discussion.

### **Course Description:**

An upper level course covering US law and policy governing air, water and other natural resources, biodiversity and public health. We consider environmental law and policy at local, state, regional, national and transnational scales, with a primary focus on common law and US federal statutes: the Clean Air Act, Clean Water Act, National Environmental Policy Act, CERCLA (Superfund) and the Endangered Species Act. These statutes are representative of varied approaches to regulation and students who pursue a range of environmental and policy careers will most likely be working with them—many environmental professions exist because of these laws.

The class will examine sources of law, including the common law, the US Constitution, legislation, administrative rulemaking, formal and informal law and evolving negotiated and market-based approaches to regulation. You will develop basic skills in legal research, case analysis, statutory interpretation and regulatory design. The course is intended to prepare students entering environmental science, policy and law professions to understand the laws, regulations and court decisions they will encounter; and to introduce them to related history and regulatory theory.

### **Learning objectives**

Students will:

- Identify appropriate governance tools to manage human-environment impacts and be capable of engaging with regulatory, legislative and other democratic processes.
- Identify different approaches to the governance and management of human activities that affect the environment in the US, including institutions, property relations, management regimes, politics, and policies
- Develop a basic knowledge of several key federal environmental laws, familiarity with state and local measures, and common law of toxic torts
- Know how law is made and enforced by legislatures, administrative agencies, courts and civil society
- Be able to apply this knowledge to determine what the governing law is in an area where the law is actively changing
- Find court decisions in free internet databases; learn to comment on federal rulemaking
- Analyze a judgment and report on the facts, the law applied by the court, and the judge's ruling (i.e., brief a case)
- Develop a basic understanding of regulatory design
- Analyze and interpret evidence.
- Improve writing, speaking and listening skills

### **Basis for Evaluation**

10% Class participation: Be prepared by reading the assignments and take the opportunity to make thoughtful contributions to class discussion. You should attend every class. I realize that sometimes circumstances arise that make this difficult. I will excuse absences for reasons recognized by University policy and supported by appropriate

documentation. If you have more than two unexcused absences, you should consider whether you are overextended and should drop the class. More than two unexcused absences will result in points deducted from the final grade. The class participation grade will include practice exercises. You will submit these via Sakai and we will discuss them in class. I am happy to provide individual feedback on your assignment if you send me an email to ask that we talk about it or for me to give you written comments.

15% 3 short written assignments which allow you to learn and practice skills.

75% 3 exams of equal weight.

**Prerequisite:**

There is no prerequisite course. However, you will need to know, before the course starts, the basics of how the government of the United States works. This is essential knowledge for you to make sense of the law and policy that we will be studying. On the first day of class you will take a short, ungraded quiz, taken from the exam given to people who wish to become U.S. citizens so that we can assess your grasp of these basics. The material that you are expected to know can easily be reviewed (or learned) by spending thirty minutes with the 2017 New Jersey Citizen’s Guide to Government by the League of Women Voters (at [http://lwvni.org/images/CG/2017\\_CG.pdf](http://lwvni.org/images/CG/2017_CG.pdf) or in Sakai: Resources: Class 1). Basic explanations of the function of the three branches of government, and local, state and federal government are given, along with the name and address of all elected NJ officials (you don’t need to know who the NJ officials are, but you should know that NJ is electing a new governor in November).

→ TOPICS AND ASSIGNMENTS ARE SUBJECT TO CHANGE - CHECK ON SAKAI ←

1	9/7	<p>Class introduction: Why do we need environmental law? Who is responsible for fixing environmental problems like pollution?</p> <p>League of Women Voters of New Jersey, 2016 New Jersey Citizen’s Guide to Government Plater, et al. Introduction and Chapter 1 (read before first class)</p>
<p>If you are a US citizen and eligible to vote you can register to vote, request a mail-in ballot, and vote in the November election. If you aren’t a NJ resident, you will need to register in your state and request a mail-in ballot. Most states require mail-in registration be received by 30 days before the election. New Hampshire town and city clerks will accept the national application only as a request for their own absentee voter mail-in registration form. North Dakota does not have voter registration. Wyoming law does not permit mail registration. For information about all this: RU VOTING: <a href="http://cyp.rutgers.edu/ru-voting/">http://cyp.rutgers.edu/ru-voting/</a> and NJ Dept. of State <a href="http://www.njelections.org/">http://www.njelections.org/</a></p>		
2	9/11	<p>Case Studies: Road Salt, Kepone, Flint Chapter 1, pp. 34-40 and all of Chapter 2</p> <p>Each of these case studies presents a different pollution problem; although there may be an attempt to regulate the problem, nonetheless there are injuries to human or non-human environmental health. Think about these questions:</p> <p>What is the “problem” in each case?</p> <p>Is there a law regulating the problem, and if so, what does the law do? For example, does it prohibit an activity, set a level of emissions, mandate a certain procedure, etc.?</p> <p>What governance step would you recommend be taken next, in each case study?</p>
3	9/14	<p>Public Trust and concepts of property Chapter 20 – pp 881-914</p> <p>Concepts of property, especially “real property” (land), are embedded in the U.S. Constitution and are a strong driver of how the United States regulates. But there are other background legal concepts, including the notions of common heritage, common concern, <i>parens patriae</i> and public trust.</p> <p>What are the differences between these ways of thinking about the environment? What concepts from chapter 1 seem to relate to them?</p> <p>When NJ experiences sea level rise, some of the intertidal zone will be submerged and the shoreline will retreat. Should trust lands retreat with the shoreline? Why or why not? What would that mean</p>

		for private landowners? Finding the law assignment explained
4	9/18	Common law: Environmental torts, causes of action Chapter 3 pp 75-108 Finding the law assignment due
5	9/21	Common law: Toxic tort remedies Chapter 3 pp 108-144
6	9/25	Common Law: Science in the courtroom, <i>A Civil Action</i> Chapter 4 pp 145-166 Review reading to this point and bring questions to class
7	9/28	Timed take home exam on public trust, common law, experts and evidence
8	10/2	Introduction to regulation Chapter 5 – pp 173-198 Problems of delegation to agencies; Regulatory strategies
9	10/5	Review exam Administrative law: rulemaking, judicial review, agency dysfunction, due process Chapter 6, 199-222, 242-255 See reading guide, in Sakai Resources
10	10/9	Chapter 6, 222-241 and review reading for class 9
11	10/12	National Environmental Policy Act (NEPA) – environmental assessment, public participation Chapter 8 – pp 313-342
12	10/16	U.S. Constitutional & Federalism Chapter 7 – pp 257-278 New Yorker article: Executive Authority [Sakai]
Oct 17 – last day to register to vote in NJ		
13	10/19	Clean Water Act
14	10/23	Reading for classes 13 & 14: Chapter 12 – pp 519-569 Clean Water Act (continued) Comment assignment due (Oct 23)
15	10/26	Raritan River Field Trip
16	10/30	Wetlands protection pp 359-365, 519, 526-529
17	11/2	Cost Benefit Analysis in Agency Rulemaking and Review of Regulations What is the value of a human life? Who should decide what that value is? What is the value of avoided carbon emissions? What is the worth of the future compared to the present? Chapter 13 – pp 571-606
18	11/6	MIDTERM – in-class
November 7 - ELECTION DAY 6am-8pm		
19	11/9	Environmental justice – readings on Sakai-Resources Reading TBA
20	11/13	Introduction to the Clean Air Act Chapter 11 – pp 459-518
21	11/16	
22	11/20	
23	11/21	
24	11/27	Biodiversity, Endangered Species Act Chapter 10 – pp 419-458
25	11/30	CERCLA
26	12/4	Chapter 16 – 687-754

27	12/7	RCRA
28	12/11	Enforcement, Corruption, Ethics Regulatory review assignment due
	TBD	FINAL EXAM

**Disability Services Statement:**

If you have a disability and require instructional and/or examination accommodation, please inform me early in the semester of accommodations you need. If you have not already done so, register with the Office of Disability Services, the designated office on campus to provide services and administer exams with accommodations for students with disabilities. The Office of Disability Services is located in the Kreeger Learning Center, 151 College Ave, Suite 123, New Brunswick phone number 732-932-2848.

**Academic Integrity:**

In my experience, the norm is for students in my classes to behave with deep respect for their own honor and integrity and for each other. The rare exceptions violate the mutual trust between students, and between students and faculty, and will not be tolerated. You can find a description of Rutgers academic integrity policy here: <http://academicintegrity.rutgers.edu/>. Please read it carefully so that you do not inadvertently engage in behavior that is a violation of the policy.

**Studying Together:**

Studying together is particularly helpful in this class. You will learn more by getting together with others to work through questions posed in the assigned reading and to create hypotheticals testing your understanding and applying the class material to environmental pollution, environmental justice and resource use issues that you encounter in the world. However, the written assignments and exams are not group work unless you are instructed by me that they are. This means that if you do collaborate on a written assignment or an examination, it will be treated as a violation of academic integrity. Please do not be confused. Ask me if you have a question about this.