Spring 2-1-2019

ENST 594.03: Grad Seminar - Environmental Law for Non-Lawyers

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Environmental Law for Non-Lawyers - ENST 594.03

Spring 19
JRH 204
12:30-1:50 Tu & Th

Professor: Len Broberg
Office Hours: M 11:00-12:30, Wed 2:15-3:45

102 Rankin Hall
243-5209
len.broberg@umontana.edu

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 January 29th 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 16th through April x.

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. 10  Class Intro & Federal and State court structure
- Jan. 15  Introduction to federal administrative structure and administrative law
  - Read: PAG Chap 6 199-222
- Jan. 17-22 Standing/Reviewability issues
  - Read: Moodle: Ohio Forestry Association, Massachusetts v. EPA (Through Section IV), & Norton v. SUWA,
  - PAG 223-255
- Jan 24  Law Research session- during this period we will cover legal research
- Jan 29  National Environmental Policy Act - Elect Course Option
- Read: PAG 314-333
- **Moodle**: NEPA process Overview, Roadless Rule reinstatement case, Keystone pipeline case

- Jan 31-Feb 5  National Forest Management Act and Federal Land Policy Management Act
  - Read: **Moodle**: Houck, *Law of Biodiversity; Forest Service Regulations*; and *Ecology Center v. Austin* and *Lands Council v. McNair* PAG 374-396

- Feb 7-12  Endangered Species Act
  - **Moodle**: *Sierra Club v. Glickman, Alabama Beach Mouse case*; and *NWF v. Babbit* PAG: 422-458

- Feb 14  Climate Change- International Law PAG 629-643

- **Feb 14**  Project Description Due for Option #1
  - Midterm handed out-Issue brief proposals due

- Feb. 19 -21  Private right suits- Our Children’s Trust- Clean Air Act-*Massachusetts v. EPA* *(Section V to end)* PAG: 513-518, **Moodle**: Our Children’s Trust
  - Feb 26  Cap and Trade- PAG 607-629
  - Feb 28  Public Interest Environmental Law Conference Eugene OR

- March 5  PIELC

- March 7  Midterm due

- March 7  Clean Air Act (contd)
  - Read: PAG 459-481

- March 12  Electric power plant permitting under CAA

- March 14  Constitutional limits on regulation (takings, "wise use" & police power)
  - Read: PAG 928-948
  - **Moodle**: Meltz et al, *Takings*

- March 19  Attorney fees - **Moodle**: Buckhannon et al

- **March 21**  Midterm due back- Option 1 interim report due

- March 21  Clean Water Act
  - Read: **Moodle**: USFS case  PAG 519-569

- March 26-28  No class spring break

- April 2  Toxics (RCRA & FIFRA)
Read: PAG 756-787, 651-663

- April 4 Collaboration: The Good, the Bad, and the Ugly
- April 9 Toxic Torts & Environmental Justice
  - Read: PAG 42-56, 71-73, 365-370, Moodle: Manaster
  - Apr. 11 Mining Law - Moodle: Wilkinson - Mining Law; Montana Mining Law; MEIC v. DEQ

- April 16-30 Student presentations (April 30 1:10-3:10 pm same room)
- April 25 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 12th. There will be three written reports due at the following stages of your project:

**Stage 1 (Due February 14)**
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 March 21)**
This report will summarize the legal issues involved and your interpretation so far.

**Stage 3 (Due April 25th)**
The final work product you will produce for your group. Final presentations will be done on April 16th through April 30th.

**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:**
- Feb 14 Action plan only
- March 7 Both

**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 Feb 14. 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 April 25. Students will present their issue brief in the presentation period between April 16 and April 30.

**Grading**

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<thead>
<tr>
<th>Project students:</th>
<th>Paper students:</th>
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<tbody>
<tr>
<td>Project</td>
<td>Midterm exam</td>
</tr>
<tr>
<td>Class Participation</td>
<td>Issue Brief</td>
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<td>70%</td>
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**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).

**Public Interest Environmental Law Conference**

Students have the opportunity to attend the Public Interest Environmental Law Conference in Eugene, OR from Thursday February 28 until Sunday March 3. This trip is optional. More details to follow in class.