

1-2013

ENST 382.01: Environmental Law

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Environmental Law

ENST 382.01- Spring 2013

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Purpose: The purpose of this class is to introduce the student to the history, law and theory of environmental regulation in the United States using public and private land regulation mechanisms as case studies. Basic principles of constitutional and administrative law relevant to environmental regulation, substantive public land use law and the history of environmental problems and their regulation will be covered.

Text: Gardner, Royal 2011. *Lawyers, Swamps and Money: U.S. Wetland Law, Policy and Politics*, Island Press.

FacPac on Ereserve - marked with **ERES** in syllabus

Tentative Syllabus:

Readings are identified below. There is a copy of an old hard copy Faculty Pac on reserve-some but not all of the readings are in that faculty pac. The readings are on E-Reserve and there are no new hard copies for sale. The E-Res web address is <http://eres.lib.umt.edu>. The password is "warming".

STUDENTS MUST COMPLETE ALL THREE PAPERS TO PASS THE COURSE!!!!

- | | |
|---------------|--|
| Jan 29 | Class Intro |
| Jan 31 | Why regulate? Review of Government Structure Gardner: Chapter 2 pages 15-25
ERES: <i>Intro to Environmental Law</i> |
| Feb 5- 7 | Federalism- The balance of State and Federal Power; ERES: <i>Power Relationships Between Federal and State Government;</i> |
| Feb 12 | Administrative Law; ERES: <i>The Administrative Law of Environmental Law;</i> Gardner: Chapter 2 pages 25-34.
Democracy in Environmental Regulation - The National Environmental Policy Act and Access to Information ERES: <i>Chap 02: National Environmental Policy Act (NEPA)</i> |
| Feb 14 | Paper 1 Draft Due |
| Feb 14 | The Clean Air Act ERES: <i>Clean Air Act</i> |
| Feb 19 | The Clean Air Act and Climate Change Regulation ERES: <i>Massachusetts v. EPA</i> and <i>EPA Factsheet</i> - Reading Note 1 due |
| Feb 21 | Discussion Day |

Feb 26 Climate Change- international regulatory approaches: **ERES: *Designing International Environmental Regulation, Guide to Climate Agreements, Bali Roadmap, Copenhagen Decision Summary, Copenhagen Accord, Cancun COP 16 Agreement - Reading Note 2 due***

Paper 1 Returned - Students must meet with paper reviewer prior to revision!

Feb 28 Discussion Day

March 5 The Endangered Species Act **ERES: *ESA(Listing, Critical Habitat, Consultation & Recovery)***

March 5 Paper1 Revisions due

March 7 Pat Williams- Congress, Administrative Action and the Courts

March 12 TBA

March 14 Elizabeth Erickson, Law in the Public Interest

March 19-21 The takings clause and environmental regulation: **Gardner** Chap 11 pages 177-190; **ERES: *Regulatory takings; Gest***

March 26 Discussion Day

March 28 Wetlands regulation- the importance of definitions: **Gardner** Chap 3 and Chap 4 pages 35-71

March 28 - Paper 2 due

April 2-4 No class- Spring Break

April 9 Private Conservation: HCPs, Land Trusts and Conservation Easements **ERES: *Plum Creek HCP- USFWS; Plum Creek Views: HCPs; HCPs: A Sweet Idea Gone Sour***

April 11 Discussion Day

April 16 Mitigation Banking- Gardner Chap 6 and 7 pages 93-126

April 18 The Mining Law of 1872 **ERES: *Wilkinson Chap 2*** Montana mining regulation- The State Constitution and Reclamation **ERES: *Montana Constitution and Metal Mine Reclamation Act - Reading Note 3 due***

April 23 Discussion Day

April 25 The Organic Acts - Forests and Preserves- National Forests -The Multiple Use Sustained Yield Act- The National Forest Management Act: provisions and implementation **ERES: *Barker***

April 25 - Paper 3 due

- April 30 Discussion Day
- May 2 Discussion Day
- May 7 Montana's approach - State Trust Lands, the Forestry Practices Act and Streamside Protection Act **ERES: *Managing Montana's Trust Lands; Revenue from Trust Lands; Forest Management on Trust Lands***
- May 9 Montana Logging Association
- May 10 Field Trip Montana Logging Association

Monday, May 13, 8:00-10:00 am, Test 1

Grading: Three papers (of at least seven pages each), three reading notes and one test will be given in the course of the term. The grade will be based on the three best scores of the papers and final and the reading notes (90% total) plus 10% class participation and will be on a plus/minus system. **All students must complete 3 papers (reading notes do not count as papers) to pass the course.** The final exam will be cumulative over the material for the entire term. The final exam is optional, for those seeking to improve their grade following the papers. Grading will be on a curve. If all of the class is doing well the curve may be "high" with more students getting higher grades, or if the converse is true the curve may be "low".

Papers:

The paper topics will be supplied by the instructor. They will relate to some aspect of the course covered in that section of the course. Papers will be expected to be approximately 7 pages in length, typewritten and double-spaced. They will require the student to reference outside sources to support the positions taken in the paper. Paper 1 will be revised following comments and resubmitted for final grading. Papers with major writing errors will not receive an "A". Papers containing plagiarism or material not written by the student that is not attributed will receive an "F" and the student will be referred to the appropriate academic discipline procedure. All writing is to be the student's own work, with references properly documented to outside sources.

Papers are due at the beginning of class on the due date. Late papers will receive a grade reduction of one "-" per day they are late (an "A" paper will receive an A- for one day late, a B+ for two days late, a B for three days, etc.). No after-the-fact excuses will be accepted. The late paper penalty can only be waived by prior approval of the instructor **before** the beginning of the class in which it is due. If you are sick, call or e-mail before the due date to get an extension.

Following the return of the first draft of Paper 1, each student must schedule an appointment with the Teaching Assistant or Instructor to review their comments on the paper before the revision is turned in. Failure to meet with the Teaching Assistant or Instructor that reviewed the first draft will result in a full grade deduction on the final grade for the revision and will result in a lower score for class participation.

Reading Notes

Reading notes will be short 1 page typewritten assignments covering some aspect of the reading assigned. Prompts for these assignments will be distributed one week before the reading note is due.

Final:

The final will be short answer essay. No early or late makeups will be allowed, unless specifically authorized by University policy (e.g., multiple exams on the same day).

Class Participation

Attendance will be taken and participation will be noted and accounted for during the class. A large part of the class participation grade will be based on the student's performance in the class discussion leader role on the assigned day. Each student will be assigned one class day to participate as a discussion leader as part of a group of up to 5 students.

Office Hours:

The Instructor and the Teaching Assistant will be available for consultation during their scheduled office hours. These are the hours where "drop-ins" can see the teaching staff. If you want to meet in another time contact the teaching staff by phone or e-mail or during office hours and schedule an appointment.

The Final Date to Drop this class with a late fee, but without a petition is 2/x/13

Environmental Law

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Course Goals - The goals of the course include:

1. Understanding of the need for regulation of environmental impacts.
2. Understanding the various methods of regulation possible and the contexts in which they are appropriate.
3. Developing written communication skills.
4. Understanding the current land use regulatory framework.
5. Understanding the relationship between government and private property.
6. Understanding the relationship between different branches of government under the US Constitution.

Expectations of Students

By the end of the course students are expected to demonstrate the following skills:

1. Coherent, logical writing on topics of environmental regulation.
2. Ability to identify the issues surrounding environmental regulation in a particular context, including the relevant agencies and actors.

3. Ability to discuss and analyze possible regulatory alternatives for land use regulation.
4. Basic composition and grammar skills at a level commensurate with upper-division undergraduates.
5. Demonstrate an informed knowledge of the regulatory systems currently in use for land use in the United States.
6. Show basic research skills for locating and analyzing outside sources.
7. Ability to formulate and articulate a well-supported and reasoned argument.

Niche in the EVST Major

Environmental problem solving in the United States requires knowledge of regulatory mechanisms and the alternatives for avoiding or mitigating environmental impacts. This course serves as a basic introduction to the regulatory framework for land use and environmental protection in the United States. It also provides basic knowledge of regulation under the governmental system in place in this country. Students in an Environmental Studies major should be knowledgeable of regulation and the options for a given problem in order to be effective problem-solvers.