

George Mason University
College of Science
Department of Environmental Science and Policy

EVPP-490 DL1 PRINCIPLES OF ENVIRONMENTAL LAW

3 Credit Hours
Spring Semester 2020

Lecture/Location: On-Line

INSTRUCTOR: Paul Bubbosh
OFFICE HOURS: Wednesdays, 9:00-10:30am (by appointment only)
OFFICE LOCATION: Fairfax Campus, David King Hall, Room 3026; Arlington Campus, Van Metre Hall, Room 656
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PREREQUISITE: None

COURSE DESCRIPTION:

This course provides a general overview of major Federal environmental laws—the structure, content, and processes. We will seek to address three fundamental questions about each major environmental law: (1) What does the law say? (2) How does it work? (3) What are the main legal issues? We will focus on the following environmental laws and topics:

1. National Environmental Policy Act
2. Clean Water Act
3. Clean Air Act
4. Hazardous waste laws: Comprehensive Environmental Response, Compensation, and Liability Act (Superfund); Resource Conservation and Recovery Act
5. Toxics laws: Federal Insecticide, Fungicide, and Rodenticide Act; Toxic Substances Control Act
6. Endangered Species Act
7. Land Use Regulations and Regulatory Takings
8. International Environmental Law

COURSE OBJECTIVES

At the completion of this course, students should be able to:

1. Define relevant legal tools, terms and concepts presented in class.
2. Describe the structure of the major environmental laws.
3. Summarize the outcome of major environmental cases.
4. Evaluate success of current environmental statutes and rules.
5. Formulate potential policy and legal approaches to emerging environmental problems.

COURSE MATERIAL

- *Practical Environmental Law*, 2nd Edition, Lauren A. Vietzen; 2013 (Wolters Kluwer, ISBN: 978-0-7355-0780-7) (Referred to as “Vietzen” below)
- Environmental Legal Cases (available on Blackboard course page)
- Environmental Statutes and Regulations (available on Blackboard course page)
- Supplementary Articles and Videos (available on Blackboard course page)

The Blackboard course page contains all the environmental legal cases you will be asked to read in this class. These cases have been edited to focus only on the relevant sections, so they are much shorter than the actual opinion. If you are interested in reading the entire case, I would recommend finding the case in *Google Scholar*.

CLASSES

This course is delivered in an asynchronous online method. This means that we will conduct the course entirely on-line. On a weekly basis, you will be responsible for reading the assigned book sections, legal cases, and articles; watching the lecture (information in the lecture expands upon assigned reading material and will be included in testing); and engaging in two on-line discussion forums. You will need to manage your time accordingly to ensure that you complete your work on schedule. I understand events will happen that cause you to miss assigned deadlines. If you plan on being away, you are welcome to submit your work ahead of time. Since most, if not all, deadlines relate to discussion forum entries and comments, once a deadline passes the utility of the posting comments also passes. I will allow up to three (6) missed deadline assignments (e.g., missing the deadline for one discussion forum = 1 missed assignment). After that, a penalty of 10 percent will be assessed for missed assignments. For example, the total score for the legal case discussion board is 125 points. The seventh missed deadline for an activity will result in 12.5 points reduced from your score, and every subsequent missed deadline will result in an additional 12.5 points reduced from your score.

I am available to answer questions from 9am to 5pm Monday to Friday. My goal is to ensure a response as soon as possible throughout the entire week, but not more than 24-hours later. On weekends and after 5pm, it may take me longer to respond.

On-line classes can be liberating and convenient because you conduct the work on your own time and location; however, on-line courses can also feel isolated or detached and result in low motivation and self-direction (I know this because I took an online legal course recently). To mitigate this potential, I begin each week with an announcement that reviews the past week and introduces the new week; I assign due dates to guard against procrastinating until the end of the week to complete assignments; and I will require working in groups to foster a sense of collaboration. I will also submit detailed comments on your postings. I might also reach out to you with some personal feedback. But you must be diligent and disciplined about completing the work on a timely basis because late submittals in an on-line course (e.g., discussion forum) detract from the learning experience of all involved. I highly encourage you to progress through the module earlier in the week and aim to submit your comments on discussion boards early. Please avoid submitting comments on discussion boards at the last moment. This prevents others from benefitting from your input and does not allow for genuine review and comment.

If at any time you just feel like chatting with me about the subject matter, akin to coming up to me after a face-to-face lecture to talk, please reach out and let's chat or schedule a time to meet in person.

TECHNOLOGY REQUIREMENTS

High-speed internet connection.

STUDENT EVALUATION/GRADES

Students will be evaluated in four areas: (1) legal case discussion board; (2) group activity discussion board; (3) mid-term exam; and (4) final exam.

Activity	% Contribution to Total Grade
Legal Case Discussion Board	25%
Group Activity Discussion Board	25%
Mid-Term Exam	25%
Final Exam	25%

TOTAL	100%
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1) Legal Case Discussion Board – 25% of grade (125 points max)

The Legal Case Discussion Board resembles an in-class discussion about assigned legal cases. For each week, you will be required to read and then answer questions about the case. Then, you will be required to comment on other student's posts. The original post and subsequent comments are evaluated per a grading rubric that is supplied for that assignment. Review the grading rubric to understand how I will grade your responses. Note, posting original responses and comments earlier in the week allows for a better discussion forum. Conversely, posting right up to the deadline largely defeats the purpose of a group discussion and will be reflected in my assessment.

2) Group Activity Discussion Board – 25% of grade (125 points max).

The Group Activity Discussion Board simulates an in-class group activity. Learning about environmental law requires applying and analyzing legal doctrine to current and hypothetical scenarios. I will pose a series of questions about a current issue, legal case, hypothetical scenario, and/or article. You will be required to answer questions and respond to other student's entries. These are post-first discussions. Your discussion posts will be evaluated per the grading rubric. Note, posting original responses and comments earlier in the week allows for a better discussion.

3) Mid-Term Exam – 25% (125 points max)

At the mid-point of the semester, you will take a mid-term exam. You have one week to complete the mid-term exam (Sunday to Sunday). The exam will be administered through Blackboard. The format of the mid-term will consist of multiple choice, true/false, and/or short-essay questions. The mid-term is an open-book, no-internet test.

4) Final Exam – 25% (125 points max)

The final exam will be administered through Blackboard. The final exam will be open during GMU final exam week. This means you have one week to complete the exam. The exam tests material from the mid-way point to the final class, meaning the final exam does not cover any material covered in the mid-term exam. The final exam will be an open book, no internet exam. You can use the assigned book, lectures, reading materials, and any other material provided to you during the course. The format of the final exam will consist of true/false, multiple choice, and/or short-essay questions.

OVERALL GRADING:

Letter Grade	Score
SC	270-300
C+	300-330
B-	330-360
B	360-390
B+	390-420
A-	420-450
A	450-500

ACADEMIC INTEGRITY

GMU has an Honor Code with clear guidelines regarding academic integrity, which covers cheating and attempted cheating, plagiarism, lying, and stealing. Plagiarism includes using third-party information on an exam without attribution to the source. The principle of academic integrity is taken very seriously, and violations are treated gravely.

GMU's honor code is available here:

<http://www.gmu.edu/academics/catalog/9798/honorcod.html>.

Let's keep this simple: do not cheat. You are here to learn and grow intellectually as a person. If you are having difficulty keeping up with the work or it is too challenging, come see me. Don't risk disciplinary action.

DISABILITY ACCOMMODATIONS

If you have a documented learning disability or other condition that may affect academic performance you should: (1) make sure this documentation is on file with Office of Disability Services, and (2) talk with me to discuss your accommodation needs at the beginning of the semester.

DIVERSITY/INCLUSIVITY

George Mason University promotes a living and learning environment for outstanding growth and productivity among its students, faculty and staff. Through its curriculum, programs, policies, procedures, services and resources, Mason strives to maintain a quality environment for work, study and personal growth.

An emphasis upon diversity and inclusion throughout the campus community is essential to achieve these goals. Diversity is broadly defined to include such characteristics as, but not limited to, race, ethnicity, gender, religion, age, disability, and sexual orientation. Diversity also entails different viewpoints, philosophies, political affiliations, and perspectives. Attention to these aspects of diversity will help promote a culture of inclusion and belonging, and an environment where diverse opinions, backgrounds and practices have the opportunity to be voiced, heard and respected.

STUDENT PRIVACY

Family Educational Rights and Privacy Act of 1974 (FERPA) is a federal law that governs the educational records of eligible students. It grants students continuous access to their educational records upon request, allows students to amend their records if they feel they're inaccurate, and restricts how and when their educational records can be disclosed.

When a student turns 18, or attends a postsecondary institution, FERPA rights belong to the student, not the parent. In general, Mason does not disclose non-directory information to third parties unless the student has provided consent, the release is to the parent of a dependent student, as required by § 23.1-1303.B.5 of the Code of Virginia, or the disclosure meets a qualified exception under FERPA. To find out more about FERPA see <https://registrar.gmu.edu/ferpa/>.

OTHER USEFUL CAMPUS RESOURCES

WRITING CENTER: Robinson Hall B213; 703-993-1200; <http://writingcenter.gmu.edu>

UNIVERSITY LIBRARIES: "Ask a Librarian" <http://library.gmu.edu/mudge/IM/IMRef.html>

COUNSELING AND PSYCHOLOGICAL SERVICES (CAPS): 703-993-2380; <http://caps.gmu.edu>

LEARNING SERVICES: 703-993-2999; <http://caps.gmu.edu/learningservices/> ; offers many good study skills workshops!

ACADEMIC COUNSELING PROGRAM: 703-993-2380;
<http://caps.gmu.edu/learningservices/academiccounseling.php>

UNIVERSITY POLICIES: The University Catalog, <http://catalog.gmu.edu>, is the central resource for university policies affecting student, faculty, and staff conduct in university academic affairs. Other policies are available at <http://universitypolicy.gmu.edu/>. All members of the university community are responsible for knowing and following established policies.

CLASS SYLLABUS

Class One (Jan 19-26)

- **Fundamentals of Environmental Law: Introduction; Constitutional Authority; Sources of Law; Standing to Sue**
- Vietzen, Chapter 1 (sections A & D); Chapter 2 (sections A & B); Chapter 3 (A & B); Chapter 4 (section A only)
- Legal Cases:
 - Boomer v. Atlantic Cement Company (1970)
 - Georgia v. Tennessee Copper Company (1907)
 - Lujan v. Defenders of Wildlife (1992)
 - Massachusetts v. Environmental Protection Agency (2007)
- Article: "How to Read a Legal Opinion," Kerr, O, *The Green Bag* (2007)

Class Two (January 26-February 2)

- **Judicial Deference**
- Legal Cases:
 - Chevron v. Natural Resources Defense Council (1984)
 - Skidmore v. Swift (1944)
 - Decker v. Northwest Environmental Defense Center (2013)
 - Motor Vehicle Manufactures v. State Farm Mutual Automobile (1983)

Class Three (February 2-February 9)

- **National Environmental Policy Act (NEPA)**
- Vietzen (Chapter 7)
- Statutory Supplement: NEPA sections 2, 101, 102
- Legal Cases:
 - Calvert Cliffs Coordinating Committee v. Atomic Energy Commission (1971)
 - Kleppe v. Sierra Club (1976)
 - Sierra Club v. Peterson (1983)
 - National Parks and Conservation Assn v. Babbitt (9th Cir. 2001)

Class Four (February 9-February 16)

- **Clean Water Act I (CWA)**
- Vietzen (Chapter 9)
- Statutory Supplement: CWA sections 101, 301, 303, 304, 502

- Legal Cases:
 - National Mining Assoc. v. U.S. Army Corps of Engineers (DC Cir., 1998)
 - South Florida Water Management District v. Miccosukee Tribe of Indian
 - United States v. Earth Science (10th Cir., 1979)
 - United States v. Plaza Health (2nd Cir. 1993)

Class Five (February 16-February 23)

- **CWA II & Other Water Laws**
- Statutory Supplement: CWA sections 306, 404; SDWA sections 300(f), 300g-1
- Legal Cases:
 - United States v. Riverside Bayview (1985)
 - Solid Waste Agency of Northern Cook City v. Army Corps of Engineers (2001)
 - Rapanos v. United States (2006)
 - Coeur Alaska, Inc. v. Southeast Alaska Conservation Council (2009)

Class Six (February 23-March 1)

- **Clean Air Act (CAA) I – Stationary Sources**
- Vietzen (Chapter 8)
- Statutory Supplement: CAA sections 101, 107-112, 160-161, 172
- Legal Cases
 - Lead Industries Assoc. v. EPA (D.C. Cir., 1980)
 - Whitman v. American Trucking Association (2001)
 - Union Electric Company v. EPA (1976)
 - Wisconsin Electric Power Co v. Reilly (7th Cir. 1991)
 - EPA v. EME Homer City Generation (2014)

March 1 – 6: Mid-Term Exam

March 9-15: SPRING BREAK

- Watch documentary *In Our Water* (1982), at <https://gmu.kanopy.com/video/our-water>

Class Seven (March 15-March 22)

- **CAA II – Hazardous Air Pollutants, Mobile Sources**
- Statutory Supplement: CAA sections 112 & Title II
- Legal Cases:
 - National Mining Assn. v. EPA (D.C. Cir. 1995)
 - International Harvester v. Ruckelshaus (D.C. Cir. 1973)
 - NRDC v. EPA (D.C. Cir. 1981)
 - NRDC v. Thomas (D.C. Cir. 1986)
 - Massachusetts v. EPA (2007)
- Mid-Year Course Evaluation

Class Eight (March 22-March 29)

- **CAA III (Acid Rain, Stratospheric Ozone, Title V, Climate Change)**
- Legal Cases:
 - Alliance for Clean Coal v. Bayh (7th Cir., 1995)
 - American Electric Power Co. v. Connecticut (2011)
 - Utility Air Regulatory Group v. EPA (2014)
- Article 1: "Changing Climate Change: 2009-2016," C. Sunstein, *Harvard Environmental Law Review*, 2018 (Vol 42, No.1) (Section II only, pages 236-240)
- Article 2: "Text in Context: The Fate of Emergent Climate Regulation After UARG and EME Homer," Ann E. Carlson & Megan M. Herzog, *Harvard Environmental Law Review* 2015 (Vol 39, No. 1).
- EPA Proposed Rule, "Affordable Clean Energy" (replaces Clean Power Plan)

Class Nine (March 29-April 5)

- **Resource Conservation and Recovery Act (RCRA)**
- Vietzen (Chapter 10-A; 11-A)
- Statutory Supplement: RCRA, CERCLA
- Legal Cases:
 - Utility Solid Waste Activities Group v. EPA (D.C. Cir., 2018)
 - American Mining Congress v. EPA (D.C. Cir. 1987)
 - City of Chicago v. Environmental Defense Fund (1994)
 - Philern Case Study
- **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)**
 - United States v. Bestfoods (2007)
 - Burlington Northern & Santa Fe Railway Co. v. US (2009)

Class Ten (April 5-April 12)

- **Toxic Substances Control Act (TSCA)**
- Vietzen (Chapter 11-B; 12-C)
- Statutory Supplement: FIFRA sections
- Legal Cases:
 - Federal Register Notice: *EPA, Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions* (54 Fed. Reg. 29,460, 1989)
 - Corrosion Proof Fittings v. EPA (5th Cir. 1991)
 - Article: "Contaminated Childhood: How the U.S. Failed to Prevent the Chronic Lead Poisoning of Low-Income Children and Communities of Color," E. Benfer, *Harvard Environmental Law Review* (Vol 41, No. 2) (Sections I & II only)
- **Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)**
 - Environmental Defense Fund v. EPA (D.C. Cir., 1976)
 - United States v. Corbin Farm Services (E.D. Cal. 1978)
 - Article: "Nothing But Conditional Love for Conditional Registrations: The Conditional Registration Loophole in FIFRA," J. Lau, *Lewis & Clark Environmental Law Review* (2015).

Class Eleven (April 12-April 19)

- **Endangered Species Act (ESA)**
- Vietzen (Chapter 12-A)
- Statutory Supplement: ESA sections 2-10
- Delhi Sands Flower-Loving Case Study
- Legal Cases:
 - Tennessee Valley Authority v. Hill (1976)
 - Babbitt v. Sweet Home Chapter of Communities for a Greater Oregon (1995)
 - Defenders of Wildlife v. Norton (9th Cir 2001)
 - Gifford Pinchot Task Force v. FWS (9th Cir 2004)
 - National Association of Home Builders v. Defenders of Wildlife (2007)
 - Article: "The Endangered Species Act's Fall from Grace in the Supreme Court," J.B. Ruhl, *Harvard Environmental Law Review* (Vol. 36, No. 2) (2012) (Read introduction, Sections I(C), III, and IV (skim section II)).

Class Twelve (April 19-April 26)

- **Land Use Regulation & Regulatory Takings**
- Vietzen (Chapter 5-A; 12-A-3)
 - Penn Central Transportation Co. v. City of New York (1978)
 - Lucas v. South Carolina Coastal Council (1992)
 - Nollan v. California Coastal Commission (1987)
 - Lorreto v. Teleprompter Manhattan CATV Corp (1982)

Class Thirteen (April 26-May 3)

- **International Environmental Law**
- Vietzen (Chapter 5-B)
- Legal Cases:
 - In Re Union Carbide Corp. Gas Plant Disaster (2nd Cir., 1987)
 - Dow Chemical Company v. Castro Alfaro (Sup. Ct. TX 1990)
 - Beanal v. Freeport-McMoran, Inc. (5th Cir., 1999)
 - UN Declarations (Stockholm, 1972, Rio Earth Summit, 1992)
 - International Agreements (Montreal Protocol, Kyoto Protocol, Paris Climate Agreement, Basel Convention)
- Article 1: "Of Montreal and Kyoto: A Tale of Two Protocols," C Sunstein, *Harvard Law Review* (pgs. 1-9; 42-54; 63-66)
- Environmentalism Revisited, Part II

Class Fifteen – May 6 – May 13

FINAL EXAM

APPENDIX: HOW TO BRIEF A CASE

Writing a case brief is the best way to prepare for discussing a legal case in the classroom. The case brief organizes key information in a format that allows for easy recall when called upon. There are different formats for briefing a case, but at a minimum a case brief should contain four components: Issue, Rule, Facts, and Analysis. Each will be described below, and a partial example provided for in the case of *Lujan v. Defenders of Wildlife* (1986).

1. **What is the legal issue?** Court opinions may include more than one legal issue. Focus on the legal question and not necessary the factual dispute. Look for what the court is asked to decide. For example, in *Lujan v. Defenders of Wildlife* the two parties are in court to settle a dispute over protecting endangered species, but the legal question has to do with a preliminary issue--standing to sue.
 - Issue: Do member of the Defenders of Wildlife organization have legal standing to sue the Department of Interior over an issue about implementing the Endangered Species Act?
2. **What is the rule?** Determine the rule of law the court uses to decide the case. This is one of the most important parts, because you will apply the rule to the facts in the analysis section below to determine the outcome. In some cases, the court introduces new interpretations that differ from past decisions. In such cases, the court is setting precedent (new case law) on the issue. Such actions are reserved for the U.S. Supreme Court.
 - Rule: In order to show standing, a plaintiff needs to demonstrate: (1) Injury in fact – a plaintiff’s injury must be (a) actual or imminent, not conjectural or hypothetical, and (b) concrete and particularized; (2) Causation – the causal connection between injury and conduct complained of must be fairly traceable to the defendant and not the result of independent action of third party not before court; and (3) Redressability – the injury must be likely to be redressed by a favorable decision of the court, as opposed to merely speculative.
3. **What are the relevant facts?** Describe the most relevant facts as they pertain to the rule identified above. The facts are best displayed in bullet format.
 - Facts:
 - In 1978, the Fish and Wildlife Service (FWS) required, via regulation, that the obligations imposed by the Endangered Species Act section 7(a)(2) (consultations) extend to actions taken in foreign nations.
 - In 1983, the FWS changed the regulation to limit consultations to actions within the United States only.
 - Joyce Kelly, a member of Defenders of Wildlife, traveled to Egypt in 1986 to view the Nile crocodile. Another member, Amy Skilbred, travelled to Sri Lanka to view

the Asian elephant and the leopard.

- Neither Ms. Kelly nor Ms. Skilbred saw the endangered animals that they had traveled to those foreign nations to see, instead, each only observed the representative habitats of these endangered species.
- Both Kelley and Skilbred stated that they hoped to return to those countries at some point in the future, but neither had any concrete plans to return.

4. Analysis. This is the most important part of the brief. The court weighs the relevant facts in light of the rule and makes its decision. How courts apply the rule to the facts and analyze the case must be understood in order to properly predict outcomes in future cases involving a similar issue. Begin with the court's decision, and then explain why they came to that conclusion.

- Analysis: The Department of Interior prevails. The majority did not find that the two members would be directly affected by the Department's actions, and therefore had not suffered an injury in fact. The majority finds that the lack of concrete plans to return to the locations of the endangered species—the "some day" intentions—did not support a finding of actual or imminent harm.

The Court then goes through its analysis of the two remaining rules (causation and redressability).

Dissents: If a concurring and/or dissenting opinions are included in the case (and included in the excerpt provided to you), you should explain their rationale for coming to a different conclusion.

In 1608, Sir Edward Coke said to the King of England:

“[T]hen the King said, that he thought the law was founded upon reason, and that he and others had reason, as well as the judges: to which it was answered by me, that true it was, that God had endowed his Majesty with excellent science, and great endowments of nature; but His Majesty was not learned in the laws of his realm of England, and causes which concern the life, or inheritance, or goods, or fortunes of his subjects, are *not to be decided by natural reason* but by the *artificial reason and judgment of law*, which law is an act which requires *long study and experience*, before that a man can attain to the cognizance of it: and that the law was the [...] measure to try the causes of the subjects; and which protected his Majesty in safety and peace [...]” (emphasis mine)