

Course: EVPP:670 Environmental Law (3.0 credits)

Instructor: Dr. David J. Verardo

Office Hours: By appointment (email: dverardo@gmu.edu)

Class Meeting: EVPP:670 meets Tuesday evenings from 7:20-10:00 P.M. in Krug Hall 209

Course Material

Text: *Environmental Law and Policy (Concepts and Insights Series)* Sixth Edition – ISBN 978-1-68561-572-7 by James Salzman and H. Barton Thomson, Jr.

Additional course materials and learning aids are provided on our Canvas course page.

Course Overview and Objectives

This course is designed to provide an overview of U.S. environmental law from its common law roots to its current role in the modern regulatory regime.

We begin our time together with an overview of the organization of the U.S. federal government to provide a framework for understanding the case law and statutory law discussed throughout the course. We will then work together on developing a set of pragmatic skills in argumentation, conflict management and negotiation necessary for developing environmental policy and law. We continue our skills development by exploring how scientific uncertainty is understood and utilized by scientists, lawyers, and others in developing policy and laws involving complex science issues encountered in environmental science. An appreciation of epistemology (i.e., how we know what we think we know) is explored as useful for understanding the roots of knowledge and how science is conducted and ultimately relied upon by society. These skills are central to being intellectually, strategically, and tactically flexible to surmount challenges and seize opportunities when they arise in the policy and legal arena. We also explore the concepts of statutory interpretation and standing to sue as fundamental to developing working legal strategies.

The specific environmental laws and statutes that we will discuss include:

- National Environmental Policy Act
- Endangered Species Act
- Clean Water Act
- Clean Air Act
- Comprehensive Environmental Response, Compensation, and Liability Act (Superfund); Resource Conservation and Recovery Act

Grading Policy

Attendance & Active Class Discussion Participation: 50%

In-class presentations of Case Briefings for relevant federal cases: 50%

GMU POLICY GUIDELINES

These university and class policies are important to understand:

- Integrity: GMU has an Honor Code with guidelines regarding academic integrity; please see <http://oai.gmu.edu> for more information.
- Disability: If you are a student with a disability and you need academic accommodations, please see me and also contact the Office of Disability Services (ODS) at 703-993-2474 or <http://ods.gmu.edu>. All academic accommodations must be arranged through the ODS.
- Privacy: Students must use their MasonLive email account to receive important University information, including messages related to this class. Please see <http://masonlive.gmu.edu> for more information.
- Electronics: Please be respectful of our time together and do not engage in activities that are unrelated to class. Cell phones may be left on but muted and used for emergencies only.
- Use of Artificial Intelligence Tools: The judicious use of AI tools is permitted for class work as an aid in learning but not as a replacement for original independent work.

OVERVIEW OF TOPICS

- 1) Introduction and Origin of Federal Policy Power
- 2) Science as Evidence in Public Policy
- 3) Argumentation as a Policy Skill
- 4) Conflict Management as a Policy Skill
- 5) Interest-Based Negotiating as a Policy Skill
- 6) Ethically Communicating Scientific Uncertainty
- 7) Statutory Interpretation
- 8) Standing
- 9) Case Briefing
- 10) National Environmental Policy Act
- 11) Endangered Species Act
- 12) Clean Water Act
- 13) Clean Air Act
- 14) Comprehensive Environmental Response, Compensation, and Liability Act (Superfund); Resource Conservation and Recovery Act

DETAILED OUTLINE

1) INTRODUCTION AND ORIGIN OF FEDERAL POLICY POWER

Précis: We will begin our exploration of science and policy with some fundamental questions such as: Where does authority for federal policy power originate? How is federal policy developed? How is federal policy implemented? What are the roles of the Legislative, Executive, and Judicial branches? What is the role of the public (including individuals, organizations, corporations) in policy making?

Reading Assignment & Resources:

- a) U.S. Declaration of Independence
- b) U.S. Constitution

2) SCIENCE AS EVIDENCE IN PUBLIC POLICY

Précis: We will explore how science is used as evidence in public policy formulation (i.e., evidence-based policy). We will investigate what science is admissible and what science is not admissible in legal setting where science is used to inform policy as well as the role of scientific experts in legal settings.

Reading Assignment & Resources:

- a) *Using Science as Evidence in Public Policy*; Prewitt, K.P., T.A. Schwandt, M.L. Straf, (ed.), 2012; National Acad. Sci.
- b) *Scientific Epistemology: How Scientists Know What They Know*; Wenning, C.J., 2009; J. Phys. Tchr. Educ. Online, 5(2).

3) ARGUMENTATION AS A POLICY SKILL

Précis: We will discuss the field of argumentation in terms of communication that aims to persuade through reasoned judgment. This skill is essential for scientists in the policy arena, and elsewhere in their professional life, but this critical skill is noticeably in decline in scientific circles where it is often presumed that given enough data, a conclusion is obvious and unassailable.

Exercise: In class exercise on Argumentation.

4) CONFLICT MANAGEMENT AS A POLICY SKILL

Précis: Conflict is everywhere and unavoidable given differing assumptions, expectations, and values among people. This is particularly evident in the public policy arena where values and agendas collide. Handled badly, conflict can do real harm and cripple our communities and relationships. Handled well, however, conflict can be a powerful personal and professional ally.

Exercise: In class exercise on Conflict Management.

5) **INTEREST-BASED NEGOTIATING AS A POLICY SKILL**

Précis: We will discuss negotiation based on interests versus position. This conflict management strategy focuses on developing mutually beneficial agreements based on the interests of the disputants such as the needs, desires, concerns, and fears important to each side. Interest-based bargaining is premised on the understanding that all sides to the bargaining process have legitimate interests to be protected and advanced.

Exercise: In class exercise on Interest-Based Negotiating.

6) **ETHICALLY COMMUNICATING SCIENTIFIC UNCERTAINTY**

Précis: We will discuss how scientific uncertainty is ethically communicated from the perspective of three policy relevant groups - scientists, lawyers, and journalists.

Exercise: In class webinar bringing scientists, attorneys, and journalists together to discuss dealing ethically with uncertainty in each professional field.

7) **STATUTORY INTERPRETATION**

Précis: We will discuss how to understand and interpret statutes, regulations, and laws beyond the black letter text.

Exercise: In class exercise on interpreting statutes.

8) **CASE BRIEFING**

Précis: We will discuss how to effectively and efficiently brief court cases to highlight and analyze key legal issues, holding, and significance.

Exercise: In class exercise on briefing cases.

9) **STANDING**

Précis: We will discuss what constitutes legal standing for parties in a dispute that is needed to bring suit.

Resources:

- a) Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984)
<https://supreme.justia.com/cases/federal/us/467/837/>
- b) Massachusetts v. EPA, 549 U.S. 497 (2007)
<https://supreme.justia.com/cases/federal/us/549/497/>

10) NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Précis: We will discuss the goals and policy objectives, major components and structure, key regulatory programs, enforcement and compliance, amendments, and key federal cases of the NEPA.

Resources:

- a) Calvert Cliffs' Coordinating Committee v. U.S. Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971) <https://law.justia.com/cases/federal/appellate-courts/F2/449/1109/240994/>
- b) Kleppe v. Sierra Club, 427 U.S. 390 (1976) <https://supreme.justia.com/cases/federal/us/427/390/#top>
- c) Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519 (1978) <https://supreme.justia.com/cases/federal/us/435/519/>
- d) Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989) <https://supreme.justia.com/cases/federal/us/490/332/>
- e) Sierra Club v. U.S. Army Corps of Engineers, 701 F.2d 1011 (2d Cir. 1983) <https://law.justia.com/cases/federal/appellate-courts/F2/701/1011/444577/>
- f) Friends of the Earth, Inc. v. Hall, 693 F. Supp. 904 (W.D. Wash. 1988) <https://law.justia.com/cases/federal/district-courts/FSupp/693/904/2357629/>
- g) Department of Transp. v. Public Citizen, 541 U.S. 752 (2004) <https://supreme.justia.com/cases/federal/us/541/752/>
- h) WildEarth Guardians v. Zinke, 368 F. Supp. 3d 41 (D.D.C. 2019)

11) ENDANGERED SPECIES ACT (ESA)

Précis: We will discuss the goals and policy objectives, major components and structure, key regulatory programs, enforcement and compliance, amendments, and key federal cases of the ESA.

Resources:

- a) TVA v. Hill (1978) <https://supreme.justia.com/cases/federal/us/437/153/>
- b) Babbitt v. Sweet Home (1995) <https://supreme.justia.com/cases/federal/us/515/687/>
- c) Loggerhead Turtle v. Volusia County, 148 F.3d 1231 (11th Cir. 1998) <https://law.justia.com/cases/federal/appellate-courts/F3/148/1231/510587/>
- d) Sierra Club v. U.S. Fish and Wildlife Service, 245 F.3d 434 (5th Cir. 2001) <https://law.justia.com/cases/federal/appellate-courts/F3/245/434/515116/>
- e) National Association of Home Builders v. Defenders of Wildlife, 551 U.S. 644 (2007) <https://supreme.justia.com/cases/federal/us/551/644/>
- f) Center for Biological Diversity v. Bernhardt, 982 F.3d 723 (9th Cir. 2020) <https://cases.justia.com/federal/appellate-courts/ca9/22-15809/22-15809-2023-12-04.pdf?ts=1701711063>

12) CLEAN WATER ACT (CWA)

Précis: We will discuss the goals and policy objectives, major components and structure, key regulatory programs, enforcement and compliance, amendments, and key federal cases of the CWA.

Resources:

- a) United States v. Riverside Bayview Homes, Inc. (1985) Citation: 474 U.S. 121
<https://supreme.justia.com/cases/federal/us/474/121/>
- b) Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers (2001) Citation: 531 U.S. 159
<https://supreme.justia.com/cases/federal/us/531/159/>
- c) Rapanos v. United States (2006) Citation: 547 U.S. 715
<https://supreme.justia.com/cases/federal/us/547/715/>
- d) Sackett v. EPA (2012) Citation: 566 U.S. 120
<https://supreme.justia.com/cases/federal/us/566/120/>
- e) Sackett v. EPA (2023) – Sackett II Citation: 598 U.S. ____ (2023)
<https://supreme.justia.com/cases/federal/us/598/21-454/>
- f) County of Maui v. Hawaii Wildlife Fund (2020) Citation: 590 U.S. ____ (2020)
<https://supreme.justia.com/cases/federal/us/590/18-260/>

13) CLEAN AIR ACT (CAA)

Précis: We will discuss the goals and policy objectives, major components and structure, key regulatory programs, enforcement and compliance, amendments, and key federal cases of the CAA.

Resources: Clean Air Act – Key Federal Cases Summary

- a) Sierra Club v. Ruckelshaus, 344 F. Supp. 253 (D.D.C. 1972)
<https://law.justia.com/cases/federal/district-courts/FSupp/344/253/2303400/>
- b) Train v. NRDC, 421 U.S. 60 (1975)
<https://supreme.justia.com/cases/federal/us/421/60/>
- c) Alabama Power Co. v. Costle, 636 F.2d 323 (D.C. Cir. 1979)
<https://law.justia.com/cases/federal/appellate-courts/F2/636/323/26474/>
- d) Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984)
<https://supreme.justia.com/cases/federal/us/467/837/>
- e) Whitman v. American Trucking Associations, 531 U.S. 457 (2001)
- f) Massachusetts v. EPA, 549 U.S. 497 (2007)
<https://supreme.justia.com/cases/federal/us/549/497/>
- g) Utility Air Regulatory Group v. EPA, 573 U.S. 302 (2014)
<https://supreme.justia.com/cases/federal/us/573/302/>
- h) West Virginia v. EPA, 597 U.S. (2022)
<https://supreme.justia.com/cases/federal/us/597/20-1530/>

14) **COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (SUPERFUND); RESOURCE CONSERVATION AND RECOVERY ACT (CERCLA/RCRA)**

Précis: We will discuss the goals and policy objectives, major components and structure, key regulatory programs, enforcement and compliance, amendments, and key federal cases of the CERCLA/RCRA.

Resources:

- a) United States v. Bestfoods (1998)
<https://supreme.justia.com/cases/federal/us/524/51/>
- b) Burlington Northern & Santa Fe Ry. Co. v. United States (2009)
<https://supreme.justia.com/cases/federal/us/556/599/>
- c) Cooper Industries v. Aviall Services (2004)
<https://supreme.justia.com/cases/federal/us/543/157/>