

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

EVPP-670 DL2 & DL3 ENVIRONMENTAL LAW

3 Credit Hours
Spring Semester 2021

Lecture/Location: HYBRID ONLINE (Asynchronous/Synchronous)

INSTRUCTOR: Paul Bubbosh
OFFICE HOURS: Fridays, 4-5pm (by virtual appointment)
OFFICE LOC: N/A [Fairfax Campus, David King Hall, Room 3026]
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PREREQUISITES: None

COURSE DESCRIPTION:

This course provides both an introduction to environmental law and an advanced (graduate-level) examination of critical legal issues. As an introduction to environmental law, this course focuses on the law's structure, content, and processes. These are fundamental building blocks to then examine the critical legal issues, such as the interrelationship between environmental laws and humans, society, and science. 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, societal, scientific, and human 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
9. Enforcement

COURSE OBJECTIVES

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

1. Identify relevant legal tools, terms and concepts presented in class.
2. Define the structure of major environmental laws.
3. Analyze major landmark environmental cases.
4. Critique the strengths and weaknesses of environmental laws.
5. Formulate potential policy and legal approaches to emerging environmental problems.

COURSE MATERIAL

- *Environmental Law and Policy: Nature, Law, and Society*, 5th Edition; Plater, Abrahams, Graham, Heinzerling, Wirth, and Hall (Wolters Kluwer, ISBN: 978-1-4548-6840-8)
- Additional environmental legal cases (available on Blackboard course page)
- Supplementary articles and videos (available on Blackboard course page)

CLASSES

This course is delivered in a blended (or hybrid) instructional design. This means that most of the class instruction is in an asynchronous format (pre-taped lectures, assignments, and group discussion forums), but we will occasionally meet in a synchronous format (live, online) to learn through practical examples and group discussion. See “Class Schedule” below for live meeting dates.

Classes run from Monday to Monday (unless otherwise indicated). On a weekly basis, you will be responsible for reading the assigned book sections, legal cases, watching the lectures, and participating in the discussion forum, writing blog entries (optional; extra credit), and/or engaging in group activities. When we meet in live lectures (optional), you will be responsible for attending and participating fully in the discussion. You must manage your time accordingly to ensure that you complete your work on schedule. Since most deadlines relate to discussion forum entries and comments, once a deadline passes the utility of posting comments also passes. This means no one benefits from a late submittal. If you miss a deadline for participating in an online discussion without an excused absence, you will not receive any credit for that assignment (this means you receive a 0 score for that assignment). You have 5 or 8-day deadlines, depending on the task, to complete assignments, so start early. Do not wait until the last moment to post. Again, late submittals will receive 0 points. Of course, I will allow for a reasonable amount of excused absences.

I am available to answer questions from 9am to 5pm Monday to Friday. I prefer that you send me your questions via e-mail. 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.

Students find online classes liberating and convenient because they engage with the work on their own schedule and location; however, students can also feel isolated or detached and experience low motivation and self-direction. To mitigate the negatives, I begin each week with an announcement that reviews the past week and introduces the new week. Further, I assign due dates on Fridays and Mondays of each week to allow for more meaningful and considered dialogue. Finally, I schedule live discussion sessions to engage in practical exercises, which is intended to foster a sense of community learning. But you must be diligent and disciplined about progressing through the material in a timely manner throughout the week, completing the work by the deadlines, and not waiting until the last moment to post your comments.

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 by telephone or virtual meeting.

TECHNOLOGY REQUIREMENTS

High-speed internet connection.

STUDENT EVALUATION/GRADES

Students will be evaluated in three areas: (1) legal case discussion board/blogs/group activities; (2) weekly quizzes; and (3) final exam.

Activity	% Contribution to Total Grade
Legal Case Discussion Board/Blogs/Group Activity	20%
Weekly Quizzes	30%
Final Exam	50%
TOTAL	100%

1) Legal Case Discussion Board, Blogs, Group Activity – 20% of grade (100 points max)

The legal case discussion board, blogs, and group activities resemble an in-class discussion about assigned legal cases and reading assignments.

Legal Case Discussion Board: Each week you will be required to answer questions about assigned legal cases. Then, you will be required to comment on other student's posts. In some weeks, you will be given the role of submitting initial comments or making comments on your peer's posts. The original post and subsequent comments are evaluated per a grading rubric available to you within the assignment and on the blackboard course page. Note, posting original responses and comments earlier in the week allows for a more meaningful exchange of ideas. Conversely, posting right up to the deadline largely defeats the purpose of a group discussion and will be reflected in my assessment.

Blogs: Entries in your blog posts are intended for you to explore the topic or question in greater depth and thought. While blog posts are your opinions, the associated grading rubric rewards creative analysis and thought with higher points. I will be the only reader/evaluator of your blog entries and the blog entries remain inside the Blackboard course (i.e., blogs are not publicly available). For Lessons 1-4, blogs are graded. The rest of the semester (Lessons 5-13), all blogs are optional. If you complete a blog, you will receive extra credit of 5 points towards your final grade for each blog entry completed in a satisfactory manner.

Group Activity: Group activity consists of two parts. The first part is attending each live lecture. The second part is working in teams to defend or advocate an assigned position or point of view. If you show-up and try your best to answer a question, you will get maximum credit. If you are unable to answer a question because, for example, you did not read the assignment, then you will receive a low score. Participation in group activities associated with synchronous lessons 1 and 2 are graded. All other synchronous lessons are optional and will not be graded.

2) Weekly Quizzes – 30% (150 points max)

Most weekly module will feature a quiz or assessment of some kind. The purpose of the quiz is to recall or retrieve the answer in the assigned material. Thus, the quizzes are less analytic and more about identifying the correct answer by retrieving it from the assigned material. The format of the weekly quizzes will consist of multiple choice, short answer, essay, or true/false questions. Quizzes are open-book, no-internet format. Quizzes are due no later than the last day of regular classes, before exam week begins, per GMU's official academic calendar for the semester.

3) Final Exam – 50% (250 points max)

The final exam will be administered through Blackboard. The final exam is usually available for multiple days (at least 3 days). The exam tests material from the entire semester. 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 SCHEDULE

Lesson One: Legal Fundamentals; Common Law [SYNCHRONOUS CLASS THIS WEEK]

- *Environmental Law and Policy*, Chapter 3
- Additional Legal Cases:
 - Georgia v. Tennessee Copper Company (1907)
 - Massachusetts v. Environmental Protection Agency (2007)
- Article: "How to Read a Legal Opinion," Kerr, O, *The Green Bag* (2007)

Lesson Two: Administrative Law

- *Environmental Law and Policy*, Chapter 6
- Additional Legal Cases:
 - Lujan v. Defenders of Wildlife (1992)
 - Friends of Earth v. Laidlaw (2000)
 - Skidmore v. Swift (1944)
 - U.S. v. Mead (2001)
 - Decker v. Northwest Environmental Defense Center (2013)

Lesson Three: National Environmental Policy Act (NEPA)

- *Environmental Law and Policy*, Chapter 8
- Additional Legal Cases:
 - Kleppe v. Sierra Club (1976)
 - National Parks and Conservation Assn v. Babbitt (2001)
 - DuBois v. Dept. of Agriculture (1996)

Lesson Four: Endangered Species Act (ESA) (SYNCHRONOUS CLASS THIS WEEK)

- *Environmental Law and Policy*, Chapter 10
- Additional Legal Cases:
 - Defenders of Wildlife v. Norton (2001)
 - Gifford Pinchot Task Force v. FWS (2004)

(Optional 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)

Lesson Five: Clean Air Act

- *Environmental Law and Policy*, Chapter 11
- Additional Legal Cases
 - Massachusetts v. EPA (2007) (Justice Scalia's dissent)
 - American Electric Power Co. v. Connecticut (2011)
 - Utility Air Regulatory Group v. EPA (2014)

Lesson Six: Clean Water Act

- *Environmental Law and Policy*, Chapter 12

- Additional Legal Cases:
 - South Florida Water Management District v. Miccosukee Tribe of Indian
 - United States v. Earth Science (1979)
 - United States v. Plaza Health (1993)
 - United States v. Riverside Bayview (1985)
 - Solid Waste Agency of Northern Cook City v. Army Corps of Engineers (2001)
 - Rapanos v. United States (2006)

Lesson Seven: Acid Rain Program; Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); Toxic Substances Control Act (TSCA) [SYNCHRONOUS CLASS THIS WEEK]

- *Environmental Law and Policy*, Chapter 14 & 15
- Mid-Year Course Evaluation

Lesson Eight: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

- *Environmental Law and Policy*, Chapter 16
- Additional Legal Cases: BNSF v. U.S. (2009)
- Watch documentary: *The Creek Runs Red*

Lesson Nine: Resource Conservation and Recovery Act (RCRA)

- *Environmental Law and Policy*, Chapter 17
- Watch documentary: *In Our Water*
- Additional Legal Cases:
 - American Mining Congress v. EPA (D.C. Cir. 1987)

Lesson Ten: Land Use Controls & Regulatory Takings [SYNCHRONOUS CLASS THIS WEEK]

- *Environmental Law and Policy*, Chapter 9, 21
- Additional Legal Cases
 - Penn Central Transportation Co. v. City of New York (1978)
 - Lucas v. South Carolina Coastal Council (1992)
 - Nollan v. California Coastal Commission (1987)

Lesson Eleven: Enforcement

- *Environmental Law and Policy*, Chapter 18, 19
- Additional Legal Cases: TBD

Lesson Twelve: International Environmental Law

- *Environmental Law and Policy*, Chapter 21
- Article 1: "Of Montreal and Kyoto: A Tale of Two Protocols," C Sunstein, Harvard Law Review (pgs. 1-9; 42-54; 63-66)
- Additional Legal Cases:
 - In Re Union Carbide Corp. Gas Plant Disaster 1987)

- Dow Chemical Company v. Castro Alfaro (1990)
- Beanal v. Freeport-McMoran, Inc. (1999)

Lesson Thirteen: Cost Benefit Analysis [SYNCHRONOUS CLASS THIS WEEK]

- *Environmental Law and Policy*, Chapter 13
- Additional Legal Cases: TBD

FINAL EXAM: May 3 – May 10

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 members 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.

- 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)