

**Northwestern University 303-0-20  
Environmental Law and Policy  
Fall 2023**

**Professor Keith Harley**

**Introduction**

Welcome to Environmental Law and Policy. This course will examine the development and implementation of nine U.S. environmental policy initiatives.

1. Conserve ecologically valuable places.
2. Incorporate environmental considerations into government decisions to fund, approve and conduct projects.
3. Save plant and animal species threatened with extinction.
4. Achieve healthful air quality.
5. Ensure a stable atmosphere and climate.
6. Establish unobstructed, fishable and swimmable waters.
7. Prevent the contamination of land and groundwater caused by waste disposal by reducing, reusing and recycling wastes and regulating waste disposal practices.
8. Remediate historically contaminated sites.
9. Provide opportunities for public participation in the development, implementation and enforcement of environmental laws.

**Course Goals**

The course will explore the genesis of these policy initiatives, the legislation that was enacted to effectuate these policies, and the practical implementation of this legislation. Students will:

1. gain an understanding of the legal context in which environmental decisions are made;
2. view these environmental policy initiatives in light of contemporary political, scientific, economic and legal realities;
3. gain the ability to apply major legal requirements to regulated facilities, sites and activities; and,
4. acquire the ability to communicate this information in an effective, professional manner.

**Logistics**

**Class Hours:** Our class meets in Tech Room A110 on Thursdays from 3:30-6:20. Course materials will be provided during our class sessions and on the course canvas site.

**Office/Phone/Email:** I can be reached at the Chicago Environmental and Energy Law Clinic, 17 N. State, Suite 710, Chicago, IL 60602. The phone number is (312) 726-2938 and the fax number is (312) 726-5206. My email address is [kharley@kentlaw.iit.edu](mailto:kharley@kentlaw.iit.edu).

**Your Email:** You are responsible for checking your email on a regular basis. Email may be used to communicate important class information.

**Student Obligations and Grading**

Your grade in this course will be based on earning points in three categories:

1. class attendance and participation, which will be verified in every class - 1 point each class - 10
2. completing six practice exam answers, graded on a scale of 0 – 3 points - 3 points/6 exams - 18
3. final exam, 6 questions, 12 points each, applying major legal requirements to a fact pattern - 72

## Reading Assignments

Attached please find a lecture schedule and corresponding reading assignments for the entire semester. Please be aware that as the semester progresses, changes may be made to the lectures and/or assigned readings. You should purchase *Environmental Law and Policy*, 5th Ed., by Salzman and Thompson.

## Class Schedule

Class One - 9/21	Introduction – The Conservation Movement	
Class Two – 9/28	The National Environmental Policy Act	Salzman, 339-355 NEPA Course Pack
	Skill – Reading Environmental Statutes	Salzman, 3-16, 75-81;
Class Three – 10/5	The Administrative Procedures Act	Salzman, 65-75
	Skill – Reading Environmental Regulations	<b>NEPA practice exam answer due</b>
Class Four – 10/12	The Clean Air Act – Criteria Air Pollutants	Salzman, 115-127, 136-137, 139-141 CAA Course Pack
	Skill – Reading Environmental Permits	CAA permit example
Class Five – 10/19	The Clean Air Act – Hazardous Air Pollutants, Trading Programs and Product Bans	Salzman, 138-139, 127-136, 143-152
	Discussion – How Should Environmental Laws Address Climate Change?	Massachusetts v. EPA (excerpt) 152-174
Class Six – 10/26	The Endangered Species Act	Salzman, 293-314; ESA Course Pack <b>CAA practice exam answer due</b>
Class Seven – 11/2	The Clean Water Act – Point and Non-Point Sources	Salzman, 175-205; CWA Course Pack
	The Clean Water Act – Preventing Degradation of Waterways and Preserving Wetlands	Salzman, 281-293 <b>ESA practice exam answer due</b>
Class Eight – 11/9	The Resource Conservation and Recovery Act – Hazardous Waste Management	Salzman, 235-252; RCRA Course Pack
	The Resource Conservation and Recovery Act – Solid Waste Management	<b>CWA practice exam answer due</b>
Class Nine – 11/16	The Comprehensive Environmental Response, Compensation Liability Act	Salzman, 252-271 CECLA Course Pack <b>RCRA practice exam answer due</b>
	Case Study – Remediating Kress Creek/West Branch of the DuPage River	
Class Ten – 11/30	Brownfield Remediation	Brownfields Course Pack <b>CERCLA practice exam answer due</b>
	Exam Review	Exam Distributed
Exam due no later than 12/7 at 5:00 p.m.	Via email to: <a href="mailto:kharley@kentlaw.iit.edu">kharley@kentlaw.iit.edu</a>	

1 **Case Study/Practice Exam**

2 Congratulations! Your Uncle Mies just won 250 million dollars in the Powerball Lottery! Uncle Mies  
3 wants to use the money to fulfill his lifelong dream of owning an industrial park. He's interested in  
4 purchasing an industrial park on the Southeast side of Chicago called Wasteland. Wasteland is a 230-acre  
5 site consisting of some existing industrial facilities that rent their land and buildings from the industrial  
6 park owner. Wasteland also has some unleased open space that your Uncle believes could accommodate  
7 future development.

8  
9 Because of your background, Uncle Mies is giving you the responsibility to scope out the environmental  
10 regulations that apply to Wasteland's existing industrial tenants. More specifically, he wants you to  
11 ensure that Wasteland's industrial tenants are in compliance with environmental requirements that  
12 originate in federal law. He also wants you to identify any issues that may limit his ability to develop  
13 Wasteland's open space. Finally, he wants you to identify the three most important environmental issues  
14 that should inform his decision whether to move forward with the purchase of Wasteland. Wasteland's  
15 existing owner, Mr. Ludwig, has agreed to cooperate with you, claiming "I swear I've got nothing to  
16 hide" and "the environmental record of Wasteland and its industrial tenants is spotless." At the same  
17 time, Mr. Ludwig seems confused when you refer to the Clean Air Act, Clean Water Act and other major  
18 environmental laws. However, he offers to give you a tour of Wasteland, which you accept.

19  
20 Mr. Ludwig begins the tour by taking you to a large open area adjacent to the Calumet River. Your Uncle  
21 Mies is particularly interested in this portion of Wasteland because Mr. Ludwig has confided in him that  
22 "big things" are planned for this unused land. After you promise to keep everything he tells you a secret,  
23 Ludwig reveals to you that he plans to sell this land to the Illinois Port Authority, a state agency that is  
24 seeking several million dollars in funding from the Federal Department of Transportation to construct a  
25 new boat slip on the Calumet River. The boat slip would be built to accommodate barges that are needed  
26 to provide raw materials to industries throughout the region. Ludwig explains that he is trying to keep his  
27 proposal to construct the slip at Wasteland absolutely secret because there are several other locations on  
28 the river that could also accommodate the new boat slip and could compete for the federal funds. He also  
29 needs to keep the project secret because some local environmental groups claim that this portion of  
30 Wasteland is an ecologically valuable wetland that is the last local refuge for the Hine's Emerald  
31 Dragonfly. "I'll sell this land and they'll build the slip before anyone even knows about the project,"  
32 Ludwig claims.

33  
34 Ludwig then takes you to an industrial plant operated by Rhoe & Sons, a family-owned electroplating  
35 operation. The plant manager, Mr. Rhoe, explains that Rhoe & Sons' only discharge is wastewater from  
36 their plating baths. Mr. Rhoe acknowledges that this wastewater contains relatively high concentrations  
37 of metals. "But," Rhoe says, "this isn't any kind of a problem because our wastewater just goes into the  
38 sewer system, straight to the POTW plant. Nothing goes into the river. So, it's not like we need a permit  
39 or anything." Ludwig confirms that no facility in Wasteland discharges its wastewater directly into the  
40 Calumet River, except an old facility he just leased to a fertilizer manufacturer called Smellco. Smellco  
41 does discharge its wastewater directly into the Calumet River, Ludwig explains. Ludwig then describes  
42 the horrible stench that he notices when he is near the pipe that discharges Smellco's wastewater into the  
43 river. "But," Ludwig says, reassuringly, "it's a manure-based fertilizer. The stuff in the waste is natural  
44 and biodegradable...nothing to worry about."

51 The next stop on your tour is a newer looking warehouse building. Ludwig expresses great pride in the  
52 new building and happily describes its tenant, Vandy, Inc., as running a “state-of-the-art” operation. The  
53 plant manager, Ms. Take, gives you a tour of the plant, which applies protective coatings to industrial  
54 equipment. Vandy, Inc. operates several enormous spray paint booths in its warehouse. According to  
55 Ms. Take, the safety of its 250 workers is the major concern at Vandy, Inc. because of the highly toxic  
56 nature of its coatings. These coatings give off hundreds of tons of volatile organic emissions each year.  
57 In order to protect its workers, Vandy, Inc. immediately vents all of the volatile organic compounds  
58 directly outside. This strikes you as important because you remember that VOCs are a contributor to  
59 ozone formation, and that the Chicago area is non-attainment for ozone. You also remember that “VOCs”  
60 refers to a class of compounds some of which are also hazardous air pollutants. When you ask if Vandy,  
61 Inc. has any equipment to control its VOC emissions, Ms. Take looks horrified and says, “Oh no! We  
62 just want to get it out of the building and away from our workers as quickly as possible!”  
63

64 The next stop on your tour of Wasteland is an enormous brick building that, on first glance, appears to be  
65 unoccupied. When you ask about the building, Ludwig explains that for several years the building has  
66 been occupied by “old Carl.” Ludwig describes “old Carl” as a former chemistry professor who once  
67 held a distinguished position at a prominent university. One day, while in the middle of a freshman  
68 chemistry lecture, old Carl had a revelation that hazardous wastes could be rendered “as safe as water”  
69 through the application of a recycling process. Old Carl immediately resigned his teaching post and  
70 rented the brick building at Wasteland. Every month, Ludwig explains, old Carl receives a “truckload or  
71 two” of hazardous wastes from the adjacent Smellco facility in 55 gallon barrels, which he uses “for his  
72 experiments”. Old Carl is harmless, Ludwig explains, except for one thing. Old Carl is absolutely  
73 secretive about his operation because he afraid his new techniques could be stolen. Old Carl is especially  
74 careful to make sure no one in the government knows about his experiments, a policy Smellco follows.  
75

76 As you leave Old Carl’s plant, you ask Ludwig why the industrial park is called Wasteland. With a proud  
77 smile, Ludwig explains that he named the industrial park Wasteland because of its “colorful history”.  
78 From 1900-1970, Ludwig explains, the land on which Wasteland is located was a dumpsite for regional  
79 industrial wastes. In 1970, the owner excavated the top layer of wastes and replaced it with a thick layer  
80 of impermeable clay. A six-inch concrete pad was then placed over much of the site. Ludwig purchased  
81 the site in 1985 and began constructing buildings for industrial tenants. “You wouldn’t even know that  
82 industrial wastes were down there,” Ludwig tells you, “except when you have to dig a foundation for a  
83 new building.” Ludwig explains that when the wastes are exposed, there’s a powerful chemical odor.  
84 There’s also rainbow-colored groundwater. Construction workers occasionally encounter buried drums  
85 and barrels. “But,” Ludwig asserts, “I can never be held responsible for the subsurface conditions at  
86 Wasteland. Neither could your Uncle. After all, we didn’t put the wastes there.”  
87

88 As you are preparing to leave Wasteland, Ludwig asks you for some advice. “The other day, I was visited  
89 by a woman who said she was from the Fish and Wildlife Service. What is that, some kind of  
90 environmental group? She was extremely nosy, and said she had been getting reports that during their  
91 lunch breaks, some of the Smellco employees were shooting water pistols at the Hine’s Emerald  
92 Dragonflies. This seems like harmless fun to me. What do we have to do to get rid of this woman?”