**Northwestern University – CIV ENG 303-0-20**

**Environmental Law and Policy Professor Keith Harley**

**Fall 2019**

# 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:** Class meets in Tech Room M-128 on Thursdays from 5:00 to 7:50.

**Office/Phone/Email:** I can be reached at the Chicago Environmental Law Clinic, 211 W. Wacker, Suite 750, Chicago, IL 60606. The phone number is (312) 726-2938 and the fax number is (312) 726-5206. My email address is 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**

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| --- | --- | --- |
| Class One - 9/26 | Introduction – The Conservation Movement |  |
| Class Two – 10/3 | The National Environmental Policy Act | Salzman, 339-355  NEPA Course Pack |
|  | Skill – Reading Environmental Statutes | Salzman, 3-16, 75-81; |
| Class Three – 10/10 | The Administrative Procedures Act | Salzman, 65-75 |
|  | Skill – Reading Environmental Regulations | **NEPA practice exam answer due** |
| Class Four – 10/17 | The Clean Air Act – Criteria Air Pollutants | Salzman, 115-127, 136-138, 139-141  CAA Course Pack |
|  | Skill – Reading Environmental Permits | CAA permit example |
| Class Five – 10/24 | 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 – 10/31 | The Endangered Species Act | Salzman, 293-314; ESA Course Pack  **CAA practice exam answer due** |
| Class Seven – 11/7 | 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  **ESA practice exam answer due** |
| Class Eight – 11/14 | The Resource Conservation and Recovery Act – Hazardous Waste Management | Salzman, 235-252; RCRA Course Pack |
|  | The Resource Conservation and Recovery Act – Solid Waste Management | **CWA practice exam answer due** |
| Class Nine – 11/21 | The Comprehensive Environmental Response, Compensation Liability Act | Salzman, 251-271  CECLA Course Pack  **RCRA practice exam answer due** |
|  | Case Study – Remediating Kress Creek/West Branch of the DuPage River |  |
| Class Ten – 12/5 | Brownfield Remediation | Brownfields Course Pack  **CERCLA practice exam answer due** |
|  | Exam Review | Exam Distributed |
| Exam due no later than 12/12 at 5:00 p.m. | Via email to: [kharley@kentlaw.iit.edu](mailto:kharley@kentlaw.iit.edu) |  |

**Case Study/Practice Exam**

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

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

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

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

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

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

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

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