

**Introduction to Environmental Law  
Syllabus as of January 2021**

PPPA 6140

**Spring 2021**

Wednesday, 7:10 - 9:40 p.m.

Professor Achintha Vithanage, [avithanage@law.gwu.edu](mailto:avithanage@law.gwu.edu)

Professor John Cruden, [jcruden@bdlaw.com](mailto:jcruden@bdlaw.com)

**Course Description**

Environmental law is uniquely a U.S. product, substantially created in the early 1970s by a virtually unanimous Congress. It dramatically reduced air and water pollution that had killed thousands of people and caused rivers to burn. Environmental law remains the central way we translate our societal goals for the environment into action, so it remains a critical part of the environmental solution. This class will help you understand modern environmental law – its genesis, its strengths, and its limitations – and how you can recognize legal issues as they arise.

This is a superb time to study environmental law and its impact on public policy. The change in Administration will occur during this course and usher in a new set of environmental policies that will require changes in regulations and potentially statutes. The environmental platform by President Biden is ambitious and focuses on climate change, environmental justice, natural resources, and enforcement. During this class we will discuss these changes as they emerge, as well as the key environmental cases being argued before the US Supreme Court this term.

The goal of this class is to have you understand how environmental law works and how it can help to achieve your professional goals. You will learn important aspects of environmental

law that you may encounter in your career - how laws are made, how regulations work, and how to read and understand a court decision. You will be able to understand the difference between environmental policy and environmental law. You will also become conversant in how government operates, the respective roles of the three branches of government, and the relative roles of the federal and state governments. Along the way, we will use group and class exercises to discuss an array of applicable legislation, dissect leading court decisions, and identify complex political factors that shape environmental law. The course will be an evolving one as it transforms under the leadership of a new administration.

### **Course Objectives**

The objective of this course is to have you become conversant in environmental law so you can understand how to use the law to meet your objectives and understand how the law may affect you and others. Our hope is that by the end of the course, you can:

- Understand the genesis of modern environmental law, the factors that shaped it, and the way today's political forces frustrate changing environmental law;
- Explain in broad terms major environmental laws, what it covers, and the primary tools it uses to achieve its objectives;
- Use the primary tools of environmental law (statutes, regulations, and court decisions) as well as other governance tools to craft solutions to existing and future environmental challenges;
- Appreciate the role that the rule of law plays in creating a stable society, economy, and environment and how this impacts people, particularly disadvantaged communities;
- Explain the various levels of government and their relative roles so that you can navigate legal hurdles and find legal opportunities to achieve environmental objectives; and
- Understand diverse perspectives about environmental issues and find ways to negotiate solutions.

## **Course Materials**

We will be using Aagaard, Owen, and Pidot's *Practicing Environmental Law* (2017) and selected Supreme Court decisions. Additional readings will be posed in Blackboard or distributed in class.

The readings and materials are central components of this course. We will expect you to have done the assigned reading before class. Our class lectures and exercises will build upon this material, not repeat it. If you do not do the readings, you are unlikely to succeed in this class and you will undermine the progress of your peers. It is also imperative that you come to class and fully participate.

## **Class Assessments**

The assessments of how you perform in this class will be based upon the components summarized below. Any assignment associated an assessment will be posted in Blackboard under "Assignments." Please note that these activities are meant to help you learn and assimilate the material as well as to assess your class performance.

### **Midterm and Final Exams (50%)**

The purpose of the midterm and final exams are to assess your understanding of the material and critical thought about the course content. Single-point questions start each exam that are meant to test functional knowledge. These have short 1-2 sentence responses. The remainder of the exam is one of more detailed fact patterns and you are asked how the various laws might apply. The exams are mostly focused on spotting

issues that trigger environmental law's applicability and basic knowledge about the ways the specific environmental laws work. A copy of last year's midterm and final, and the model answers, are posted in Blackboard under "Tests."

### **Class Attendance and Participation (20%)**

"Showing up is 80% of life," according to Woody Allen. Class participation will be based upon 1) class attendance, in adherence to the class attendance policy below; 2) participation in class discussion and exercises; 3) demonstration of having prepared for class by performance on mini essays and quizzes; and 4) thoughtfulness of class participation. This score is not dependent on *quantity* of participation. Students who find themselves participating more than others should allow sufficient space in the class so that others may participate; and those students reticent to speak should prepare before class at least one observation that they gleaned from each reading that they are willing to share with others.

### **Represent a Party (10%)**

The purpose of this exercise is to have you work through primary materials to identify which factual issues are important and which are not; to understand other parties' arguments and perspectives; and to argue a perspective with which you may not agree. You will be given a variety of raw materials about the Dakota Access Pipeline to read before class. You will be assigned to a group to represent one of four parties (EPA; Army Corps; Dakota Access Pipeline; Standing Rock Sioux), and you will argue one issue on behalf of your client as if you are arguing to the Court of Appeals. After hearing

the arguments, the class will discuss the strengths and weaknesses of the arguments and how to analyze the controversy.

## **Writing Assignments (20%)**

### **Company Strategy Memo (10%)**

The class will be asked to follow an important Supreme Court case which will be argued on January 19, BP v City of Baltimore. In that case the Supreme Court must decide whether a challenge by the City of Baltimore and others against a number of oil companies should be heard in a state or federal court. The underlying case involves significant climate change issues. You will be asked to listen to the oral argument, or read the transcript, and prepare a memorandum to a hypothetical boss describing the case, the argument, what you consider to be a likely decision, and how it will likely affect the company's work going forward. The Memo must be submitted by email to both Professors Vithanage and Cruden.

### **Written Case Presentation (10%)**

The purposes of this assignment is to assess your ability to find, summarize, and analyze a court decision and present its key contents and implications. Each student will be asked to take responsibility for one court decision that covers a major principle or topic in the class. You will prepare, a one to two page summary of the case and its implications in the form of a case brief. Please upload your summary to Blackboard for distribution to the class as a reading assignment. The class will then discuss the case and the student will be called upon to answer clarifying questions. These presentations will take place over the course of the semester.

## **Additional Assignments**

- 1) Throughout the course, we will hold some mini essays and pop quizzes. These will not be graded. The purpose of mini-writing assignments and quizzes is to verify that you are comprehending the material and to help you assimilate and process the course content. You will be asked to take brief quizzes or surveys or to submit brief papers before or after class. These are usually just a few very specific questions or less than a page of writing. The exercises also help us recalibrate the course material and identify areas that need additional explanation or attention. If not delivered via Blackboard, these assignments should be submitted by email to both Professors Vithanage and Cruden.
- 2) The class will be encouraged to attend virtually – on an optional basis – one case being argued before either the Environmental Appeals Board or the Federal District of Columbia courts. Professors will give you information on cases and dates.
- 3) We would like to meet individually with each student during the semester. You can arrange a separate virtual meeting or discuss with the Professor coming early to a class and meeting then. You need not meet with both Professors, but at least one meeting with either Professor Vithanage or Cruden is encouraged.

## **Grading**

In grading, we will weigh the class assessments discussed above, based upon 100 possible points:

Final Exam	30
Midterm Exam	20
Represent a Party	10
Class Attendance and Participation	20
Writing Assignments	20
	100

Grades for the course as a whole will reflect the total points adjusted upward to reflect the total points achieved by the top performing student. These letter grades reflect the following philosophy:

- A Excellent: Exceptional work for a graduate student. Work is unusually thorough, well-reasoned, creative, methodologically sophisticated, and well written. Work is of exceptional, professional quality.
- A- Very Good: Very strong work for a graduate student. Shows signs of creativity and a strong understanding of appropriate analytical approaches, is thorough and well-reasoned, and meets professional standards.
- B+ Good: Sound work for a graduate student; well-reasoned and thorough, without serious analytical shortcomings. Indicates the student has fully accomplished the basic objectives of this graduate course.
- B Adequate: Competent work for a graduate student with some evident weaknesses. Demonstrates competency in the key course objectives but the understanding or application of some important issues is less than complete.
- B- Borderline: Weak work for a graduate student but meets minimal expectations. Understanding of key issues is incomplete. (A “B-” average in all courses is not sufficient to sustain ‘good standing.’)
- C+ /C / C- Deficient: Inadequate work for a graduate student; rarely meets minimal expectations. Work is poorly developed or flawed by numerous errors and misunderstandings of important issues.

- F Unacceptable: Work fails to meet minimal expectations or course credit for a graduate student. Performance has consistently failed to meet minimum course requirements. Weaknesses and limitations are pervasive.

## Policies and Expectations

### **Attendance & Participation Policy**

As a Master's level class, students are expected to participate actively in class. While the professors will present material that is unfamiliar and help guide students through the material, students are active co-teachers by bringing their experiences and expertise to class and by discussing the material, exploring new ideas, and challenging each other on how environmental law works in practice as well as theory.

Please let both Professors Vithanage and Cruden know via email if you will not be able to attend class. Attendance at all classes is expected, and more than two absences will affect your grade as part of the Class Assessment policy above. Both Professors Vithanage and Cruden will hold office hours virtually by appointment—do not hesitate to reach out via email to set a time to talk.

### **Credit Hours and Work Expectations**

Pursuant to University policy, 37.5 hours of work per semester is required for one credit hour.

This course is three credit hours and as such will require 112.5 hours of work, divided between direct instruction (class time) and independent learning (completing reading and other assignments).

Time spent in class will be 2.5 hours per week (35 hours total) and time for class preparation will be an average of about 5 hours per week (78 hours total) with the understanding that some weeks will require more than 5 hours of independent work (when you prepare your case presentation and prepare for the midterm and final exams) and some weeks may require slightly less. Thus, the total hours of work will meet (and likely exceed) the 112.5 hours required.

### **Academic Integrity**

All examinations, papers, and other graded work products and assignments are to be completed in conformance with the [George Washington University Code of Academic Integrity](#). We take any instances of academic dishonesty, including plagiarism, very seriously. In the event of an occurrence of academic dishonesty, the student will be required to meet with both professors in order to assess the severity of the student's actions. The consequences will be determined on a case-by-case basis and may include



(but is not limited to) zero credit for an assignment or exam, a grade of “F” in the course, and/or submission of a report to the Academic Integrity Council.

### Additional Policies and Information

- **Blackboard:** Blackboard will be used to communicate with students. Please make sure that you can access the course and that you regularly check whatever email account Blackboard uses for you. If you have problems with Blackboard, contact the Helpdesk at 202-994-5530 or helpdesk.gwu.edu.
- **Zoom:** All classes will be held virtually over the Zoom platform. Links will be provided via Blackboard.
- **Virtual Class Decorum:** Texting, side conversations, or using your laptop for anything other than taking notes is an inappropriate use of class time. Please remain muted when you are not speaking. Should you have difficulty with your internet, please let the Professors know via the chat function or by email.
- **Late Work:** Unless you have made arrangements with us in advance, late work will be penalized with a one grade step reduction (e.g. from an A- to a B+) per day.
- **Incompletes:** A student must consult with the instructors to obtain an “incomplete” before the last day of class. The student and instructors will sign the CCAS contract for incompletes and submit it to the ENRP Director.
- **Grades:** No grade changes can be made after the conclusion of semester, except for clerical error.
- **Syllabus:** This syllabus is a guide to the course. Sound educational practice requires flexibility and the instructors may revise content and requirements during the semester.
- **English for Academic Purposes Writing Support Program:** If English is not your first language, you may wish to take advantage of GW’s Writing Support Program which offers free, one on one service. Visit <http://www.gwu.edu/~gwriter> for details.
- **Accommodation for Students with Disabilities:** If you need additional time or other accommodation due to a disability, let the instructors know in first week of the class. For accommodation on the basis of disability, you need to provide documentation to the Office of Disability Support Services.
- **University Student-Support Resources:** Help in addressing academic, social, and personal issues is available 24 hours a day, 7 days a week through the University Counseling Service which can be reached at 202 994 5300.
- **University Policy on Religious Holidays:** The Faculty Senate has set guidelines pertaining to the observation of religious holidays. These have become university policy and are as follows:
  - that students notify faculty during the first week of the semester of their intention to be absent from class on their day(s) of religious observance.
  - that faculty continue to extend to these students the courtesy of absence without penalty on such occasions, including permission to

- make up examinations.
- that faculty who intend to observe a religious holiday arrange at the beginning of the semester to re-schedule missed classes or to make other provisions for their course- related activities.
- that, prior to each semester, the administration circulate to faculty a schedule of religious holidays most frequently observed by GW students
- that student members of other religious groups are also entitled to the same courtesies and accommodations.
- that the administration conveys this policy to students by including it in the Schedule of Classes and other places deemed appropriate.
- University policies may be found here: <https://registrar.gwu.edu/university-policies> .

Class Schedule January 2021

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**Class Schedule and Assignments**

Class	Class Topic	Readings	Assignments
	A. Government's Organization and Function and How They Shape Environmental Law		
(1) Jan. 13	<p><b>Introduction to Environmental Governance</b></p> <p>Course Overview</p> <p>Overview of the creation and type of US Environmental Law</p> <ul style="list-style-type: none"> <li>a. Array of statutes</li> <li>b. Relevant institutions</li> <li>c. Cooperative federalism – role of states and local governments</li> <li>d. Common Law</li> <li>e. Criminal Law</li> </ul>		BEFORE class complete online bio survey. Have a copy on hand to present in class to your colleagues.
Jan. 20	<b>NO CLASS: Presidential Inauguration</b>		

Class	Class Topic	Readings	Assignments
(2) Jan. 27	<b>Administrative Law and Theory</b> a. Administrative Procedure Act. b. Reading regulations d. Standard admin law requirements in litigation including standing and ripeness e. Deference to agency interpretations f. Constitutional Law	Aagaard pp. 89-124; Skim <i>Chevron v. NRDC</i> (1984))	BEFORE class submit answers to questions a, b, and e on pp. 98-99 of Aagaard. Send answers by email to professors.
(3) Feb. 3	<b>Courts and Access to Justice?</b> a. Reading a statute b. Understanding courts c. Reading a court decision d. Role of legislative history, stare decisis, and res judicata	Aagaard pp 59-62, 80-99	
	B. Considering Environmental and Species Impact		
(4) Feb. 10	<b>National Environmental Policy Act</b> Introducing the magna carta of environmental law	Aagaard pp. 645-727 Skim <i>Calvert Cliffs v. US AEC</i> (1971)	Guest Lecturer: LeRoy Paddock
(5) Feb. 17	<b>NEPA Exercise - Understanding Environmental Impact Statements</b>	Dakota Access Pipeline Materials	In class exercise: Represent a Party

Class	Class Topic	Readings	Assignments
(6) Feb. 24	<b>Endangered Species Act and Wildlife Trafficking</b> How does U.S. law work to address endangered or threatened species? How do we deal with domestic and international wildlife trafficking?	Aagaard Ch. 8 p. 729-800  <u>TVA v. Hill</u> (1978) (Aagaard 775-780)	In-Class mini-quiz on NEPA, ESA requirements.
(7) Mar. 3	<b>Mid-term</b>		
(8) Mar. 10	<b>Environmental Justice/ Enforcement</b>	Aagaard p. 24-25, 493-96, Exec. Order 12,898 at p. 49-51 Listen to EJ Podcast uploaded on Blackboard.  Enforcement reading to be provided. Review also EPA website for Office of Enforcement and Compliance Assurance and review any enforcement/compliance initiatives.	Skim briefs in <u>BP P.L.C. v Mayor and City Council of Baltimore</u> , No. 19-1189, by oil companies, City of Baltimore, and US Department of Justice which will be available on Blackboard and listen or read transcript of oral argument. Your Company Memo (not to exceed 5 pages) concerning that case due March 24.
Mar. 14 – 20	<b>NO CLASS: Spring Break</b>		
	C. Regulating Products and Pollution		
(9) Mar. 24	<b>Clean Air Act: Stationary Source</b>	Aagaard pp. 159- 179, 188-192, 216-219, 243-245  Skim <u>Whitman v. American Trucking</u> (2001) (Aagaard 186-188); <u>UARG v EPA</u> (2014) (Aagaard 282-294)	Company Memo due March 24.

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(10)Mar. 31	<b>Clean Air Act: Mobile Sources and Climate Change</b>	Aagaard pp. 261-264  Read <i>Mass v. EPA</i> (2007) (Aagaard 127-134)  Skim Vol 36 Virginia Environmental Law Journal 118 (2018) on VW prosecution	
(11)Apr. 7	<b>International Considerations and Impact on US Law and Practices: Climate Change &amp; Other Examples</b>	TBD.	
(12)Apr. 14	<b>Clean Water Act:</b> <b>A. Point Sources and the Scope of Regulation</b> <b>B. Nonpoint Sources and Wetlands</b>	Aagaard pp. 299-313, 358-370, Read <i>Rapanos v. United States</i> (Aagaard 323-336); DoJ Press releases in Deepwater Horizon oil spill  Aagaard pp. 378-420.  Read the Supreme Court decision in <i>County of Maui v. Hawaii Wildlife Fund</i> , 140 S.Ct 1462 (April 23, 2020).	In preparation for class, and after reading the Maui case, consider the following question for discussion: If there is a discharge into groundwater that does not reach "waters of the United States," is a CWA permit required?

Class	Class Topic	Readings	Assignments
(13)Apr. 21	<b>Hazardous Wastes and Sites – CERCLA &amp; RCRA</b> The world of strict, joint and several, and retroactive liability	Aagaard pp. 547-568; 585-588, 598-600; 610-619; <u>US v Bestfoods</u> (Aagaard 601-610)  Read <u>Burlington Northern v US</u> (Aagaard 572-579).  Skim the Supreme Court decision in Atlantic Richfield v. Christian, 140 S.Ct 1335 (April 20, 2020).	In preparation for class, and after reading the Atlantic Richfield case, consider the following question for discussion: What role does EPA have in determining whether this kind of case goes to state or federal court?
(14) Apr. 28	<b>Chemicals and Pesticides: Risk, Toxicology, and Product Regulation – TSCA/FIFRA</b>  <b>Course Review / Exam Prep</b>	Stone article; Ch. 16, Law of Environmental Protection Treatise	
TBD May 5?	Final Exam		