

ENVS 450 ENVIRONMENTAL LAW AND POLICY Fall 2009
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SYLLABUS

Regardless of your specific environmental interests or ENVS concentration, the material we cover this semester will be important to you, both as an environmentally concerned citizen and in your career as natural resources manager, compliance officer, or activist trying to secure passage or enforcement of an environmental law or attempting to “change the system.” If you work in a governmental agency at any level, much of what you do in your professional life will be directly determined by environmental laws like the Clean Air Act and the Endangered Species Act that we will examine this semester.

It is my intention, however, not just to discuss the laws themselves, but the political/economic/legal *system* from which they emerged and in which they function. This broader context is important if we are to understand what Zachary Smith, the author of your main textbook, calls “The Environmental Policy Paradox”—by which he means that although in many cases we understand what *should* be done about environmental problems, the necessary things *don't get done*. An overall knowledge of how the system works, and for whom, is important to understanding the status of environmental protection in the U.S.. Thus, we will consider the relationship of government to the economy and economic interests, both generally and in particular cases, and the ways in which the separation of powers (the check-and-balance system) and federalism affect lawmaking and, very importantly, the *implementation* of legislation.

That overall understanding of “the system” is important in the most crucial context of all, which is “sustainability.” Broadly speaking, a sustainable society is one that can *last*—that is, a society that limits its use of and impact on natural systems, so that they can regenerate and be available for succeeding generations. Although there are arguments about exactly where the “use boundaries” lie, it is clear that in many cases we either have exceeded or soon will exceed those boundaries. Smith is one thinker who argues that our present political/economic/legal system and its accompanying “dominant social paradigm” are not really compatible with keeping us within those boundaries. We’ll compare precautionary approaches to regulation, which are being used more frequently in the EU, to the risk assessment/cost benefit approach that has been dominant in the U.S. in recent years. That comparison is especially germane to climate science and policy. Since many scientists believe that anthropogenic climate change is the most serious threat to sustainability, climate and energy policy will receive significant attention in several different contexts throughout the semester.

To enhance the research and writing competence of SFSU graduates, the SFSU Academic Senate has determined that much more writing *instruction* should be done in content-oriented courses like ENVS 450. Each department has been asked to designate a “writing intensive” course within the major, and 450 has been so designated by ENVS. Accordingly, a research paper will be one of your main assignments this semester. Class size is limited, which will enable me to spend time with each of you framing your research question, helping you locate proper sources, and writing your paper. **But of course, enhancing your research and writing skills will demand considerable commitment from you.** In addition, much of the course material is detailed, and the reading is dense (3 books, as well as newspaper reading, are required). **If the rest of your schedule is very demanding, please consider taking the course later, when you can devote sufficient time to it.**

In addition to achieving research and writing competency, LEARNING OBJECTIVES for the course include enhanced understanding of and ability to articulate and apply the following concepts:

- * The ways private-sector actors, such as corporations and environmental groups, influence lawmaking, interpretation, adjudication and enforcement
- * How government and regulation are viewed in the “dominant social paradigm”
- * The Constitution and constitutional bases for environmental law

- * The environmental policy roles of each branch of government
- * The division of roles between the federal government and the states
- * What regulatory agencies do and how they do it; their role in lawmaking (administrative law)
- * The special significance of the courts; the judicial focus of environmental activists in recent years
- * Major U.S. environmental laws and the regulatory agencies responsible for administering them
- * Cost-benefit analysis and risk analysis
- * The precautionary principle and its regulatory and political implications

Attendance and class participation: You will not do well in this class unless you attend. Readings complement but do not substitute for lecture material. **Please participate** in class. If you find that you're not actively listening or participating because you're too busy taking notes, feel free to record class sessions.

A note on the budget situation:

The state legislature and governor have balanced California's state budget by cutting about \$26 billion from state spending. All CSU campuses have been severely affected, with the CSU budget reduced by over half a billion dollars. All faculty and staff are required to take furlough days (days when we do not work); we are not paid for those furlough days, which amounts to a pay reduction of about 10%. The SFSU administration has designated four of those furlough days during the fall semester; one of those days (Monday, October 26) will affect this class; the campus will be closed. In addition, ENVIS faculty are taking furlough days during the week of October 12. This class will not meet that week, for a total of three class meetings that will not be held. Additional faculty furlough days (a total of 9 for each faculty member over the semester) will be taken on days when this class does not meet, although be aware that at least one of my remaining furlough days will affect Tuesday office hours. You'll be notified by e-mail about this. The remaining furlough days will not affect you directly, although (if they are on a Friday or some other day when I'm not in class) I will not be grading papers that day, so your assignments may not be returned as promptly as you would like. Faculty have been asked to sign an agreement that we will not work on furlough days. I hate this whole situation and so do other faculty members with whom I have spoken. I am very upset about losing precious class time. The world and its problems are becoming increasingly complex, a 15-week semester seems too short as it is. However, CSU faculty have long been overworked and overpaid. We have already given up a raise that our union had negotiated; now our salaries are cut as well, even as our workload has gone up *again*: advising desperate students who can't get courses, having additional dept. meetings to cope with course cancellations that affect curriculum, etc. etc.

What the furloughs mean for you: While there will be less classroom time than usual this semester, this does not mean that the amount of material you need to learn is any less than it would otherwise be. It is up to your professors to find ways to ensure that your courses and eventually, your degrees are as meaningful as they always have been. So you will need to take more responsibility for learning outside the classroom. I have assigned out-of-class film viewing to compensate for some of the missing class time; you may also receive some additional reading assignments. You are expected to use the time you do not spend in class working on your papers, doing your reading and watching the assigned films, which you may do online. All assigned texts and films will be the basis for exam questions, even if we do not discuss them in class.

Requirements: Your grade will be based on **midterm and final exams (40%), a 5-page minimum length, single spaced, 12-point font research paper (10% for abstract, 30% for final paper) and a 2 ½ page single-spaced essay on the book *Precautionary Politics* (20%)**. The papers together will account for 60% of your grade, and will be penalized if late, so please get them in on time (research paper Nov. 30; Whiteside paper Dec. 21). You will need to use academic sources (scholarly books or academic journals) in addition to the textbooks (at least 3 in the large research paper, 2 in the essay). (If you have not completed the SFSU library requirement, which will introduce appropriate library databases, this would be a good time to do so. Much of our library's collection of journals is available online; your SFSU e-mail account gives you automatic access. Google Scholar can be a very efficient way to locate appropriate articles, too. Wikipedia is just fine for background reading about a subject, but it is NOT an appropriate source for your papers.) Please use the Modern Language Association (MLA) format for citations. MLA guidelines are available online from "The Owl" at Purdue University:

<http://owl.english.purdue.edu/owl/resource/557/01/>. More detailed guidance for papers is at the end of the syllabus; we will also discuss the research paper in class.

Writing help: If you know right now that you need extra help with your writing, please contact the Learning Assistance Center (drop in at HSS 348, call (415) 338-1993, or e-mail lac@sfsu.edu.) Keep in mind that **the quality of your writing will affect your grade in this class**. After I grade your abstract, I may ask you to visit the LAC. If I do make such a comment on your paper, it's in your interest to visit the LAC as soon as possible to get the help you need. Learning to write well is worth your time; chances are that it will improve your grades *in general*.

Plagiarism—the use of material drawn from articles, books or any other source without citing and/or using quotation marks when appropriate—is a serious offense and may result in ZERO credit for the assignment, depending on how much of the assignment is plagiarized. **DON'T DO IT! (It's easier to detect than you may think.)** If you're not sure how or what to cite, ask me for help. .

Disability: If you have a disability and need accommodation, please contact me. The Disability Programs and Resource Center is available to facilitate reasonable accommodations. The DPRC, located in SSB 110, can be reached by telephone at 338-2724 (voice/TTY) or by e-mail at dprc@sfsu.edu.

Notes on e-mail. You should have an ACTIVE SFSU e-mail account that will enable you to receive e-mail messages from me. Please do not ask me to e-mail you at a non-SFSU e-mail address. If you prefer to use another e-mail address, arrange to forward messages automatically from your SFSU account to your preferred account. When you contact me by e-mail, please identify yourself with your full name and the class you are in (I am teaching several classes, so when you ask, "re-send the syllabus" I need to know which class it's for), and allow 36 hours for a response, especially on weekends. Usually I'll answer within a day.

REQUIRED READING

Zachary Smith, *The Environmental Policy Paradox*

Kerry Whiteside, *Precautionary Politics*

Joseph J. Romm, *Hell and High Water*

Newspaper (the *San Francisco Chronicle* is fine) at least 3x per week

Additional readings and films are shown below.

APPROXIMATE SCHEDULE:

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| 8/26 | Introduction to course and to "Writing Across the Curriculum." Your research paper assignment. |
| 8/31 | Ecosystem integrity and sustainability Read Smith, Ch. 1, and Romm, Part I. |
| 9/7 | Labor day; no class |
| 9/8 | Campus furlough day; no Tuesday office hours. |
| 9/2-9/9 | Private interests and public policy. The "dominant social paradigm" and the U.S. constitution. Read Smith, 2, and the "Politicians and elections" and "Influence and Lobbying" sections of the Open Secrets website: www.opensecrets.org . |
| 9/11 | Last day to drop. |
| 9/14-16 | The division of governmental power: a brief overview of the check and balance system. Smith, 3. |
| 9/21 | Federalism. Smith, 4 (pp. 45-60). |
| 9/22 | Last day to add with a permit. |

9/25	Last day to apply for Fall 09 Graduation.
9/23-10/5	Congress; environmental lawmaking. From possibilities (NEPA) to limits. Smith, finish ch. 4 and read Ch. 5; read Romm, Ch. 5 and 10, and the following piece from the Open Secrets website: http://www.opensecrets.org/news/2009/06/legislators-opposed-to-climate.html
10/7	The executive branch: presidential powers and environmental policy. Romm, Ch. 6, and “Corporate Influence Over EPA Rulemaking,” by Sheldon Kamieniecki. Locate with Google Scholar or through SFSU library databases.
10/9 (Fri.)	ABSTRACTS DUE TO glenn@sfsu.edu by midnight.
10/12-14	Furlough days. No class sessions or office hours this week. USE THIS WEEK TO WRITE A FIRST DRAFT OF YOUR PAPER.
10/19	Presidential powers, cont. Romm, Ch. 9.
10/26	Furlough day; campus closed.
10/21	Executive branch agencies and administrative law. Read the article “Revolving Doors?” by Etzion and Davis (locate using Google Scholar or the SFSU library databases).
10/28	MIDTERM
11/2-16	Pollution law. Risk assessment and cost-benefit analysis. Smith, Chs. 6 and 8. Watch the film “Poisoned Waters” online. Here’s the link: http://www.pbs.org/wgbh/pages/frontline/poisonedwaters/ .
11/18	Land use and natural resources, the Endangered Species Act. Smith Chs. 7 and 9, Romm Chs. 7, 8 and conclusion, and “The Endangered Species Act Debate” by the National Center for Policy Analysis, and “The Endangered Species Act: 30 years on the Ark, by Curtis and Davison. Locate both using Google.
11/19	Last day to withdraw.
11/23-27	Thanksgiving break. No classes.
11/30	RESEARCH PAPER DUE.
11/30-12/7	Land use and natural resources, continued. Finish Smith, Read Whiteside (all).
12/9-14	CONCLUSION.
12/21 (Mon.)	FINAL EXAM 1:30-4 P.M. WHITESIDE PAPERS ARE DUE (TURN IN WITH EXAM).

PAPER ASSIGNMENTS: Due dates are shown above. Keep in mind that paper one has 2 different due dates.

PAPER ONE (Research paper). 5 single-spaced pages in 12-point font. Requires at least 3 academic sources *in addition to your textbook if you use it as a source*. Writing objectives: to build research/writing skills: choose, narrow and frame a topic in a way that answers a research question; locate topic-appropriate academic sources; use evidence appropriately; present findings clearly and appropriately for the target audience. Content objectives: enhanced and specialized understanding of some aspect of environmental

law and policy processes (lawmaking, administration/enforcement) or the role of specific policy actor(s), e.g., environmental organizations, corporations, the courts, the President; and/or a specific environmental law in the U.S.

One of the most difficult aspects of research can be choosing and narrowing a topic. If your general area of interest is “energy exploration and extraction on Federal (public) lands” **begin by doing some course-relevant background reading on that topic.** Since this is a law and policy course, a good place to begin would be to do some reading on (for this topic) the Department of the Interior and the U.S. energy policy. For background reading, you can use Smith’s chapters on land use law and policy and energy, Wikipedia (fine for background, but *not appropriate as an academic source*), or the U.S. Department of the Interior/Bureau of Land management websites. **Background reading will help you to discover specific issues and controversies, as well as the history** surrounding energy policy and public lands. One of these specific dimensions will be an appropriate topic for a paper of the length required for this class.

To be meaningful, your paper should pose, and your research should answer, a **question of significance**—that is, a question that interests you, but also one whose significance you can explain to yourself and your readers. To continue with the example above, you will realize after your background reading that Presidential administrations have interpreted the “multiple uses” goal for public lands very differently. The Bush Administration, for example, claimed that oil and gas extraction are compatible with other uses of public lands. **A logical “question of significance” might then be:** What does the appointment of Ken Salazar as Secretary of the Interior during the Obama administration imply for the administration’s position on the use of public lands for oil and gas extraction and multiple uses of public lands generally? Another possible question of significance would be: Does “multiple use” policy for public lands really work, or do some uses preclude other uses?

Here’s another example. General topic of interest: federal regulation of carbon dioxide. Background reading on attempts to regulate CO₂ emissions; the U.S., Supreme Court ruling of 2007 that authorized EPA to regulate CO₂ as a pollutant; strategies to regulate CO₂ emissions (renewable portfolio standards, cap-and-trade, carbon taxes); state-level initiatives, including California’s. There are a number of possible research questions, for example:

- 1) Should President Obama use his authority to direct the EPA to regulate CO₂, or should he wait for Congress to pass separate climate legislation?
- 2) Does cap-and-trade or a carbon tax seem to be the best regulatory strategy for CO₂?
- 3) Where have renewable portfolio standards been tried, and how well do they appear to work?
- 4) What are states doing to regulate CO₂? Do we really need federal regulation, or can states be left to do it on their own?

You should begin to think about your topic and do some background reading **RIGHT AWAY**. I am available during office hours to help if you get stuck. Our visits will be more productive, though, if you do as much as you can before you come to see me, and **WRITE IT DOWN**.

Your abstract: On October 9, you’ll turn in by e-mail an abstract (brief description) of your paper, including your research question. In addition, you should list at least 2 of the 3 academic sources you are planning to use, as well as other sources you have located. Please attach your abstract to your e-mail as a Word document, and identify yourself by name in your e-mail (don’t just use your e-mail address). I will return these to you with comments ASAP: My target date is one week from the date you submit.

PAPER TWO: Objective: to illustrate your understanding of the argument made in *Precautionary Politics*. Your paper should answer the following questions: What is the difference between risk assessment and a precautionary approach to policymaking? In what different ways is scientific evidence used in these types of analysis? Why do advocates of precaution argue that cost-benefit analysis is not a good way to decide whether or not regulation should occur? Why is climate change the type of problem for which a precautionary approach might be particularly pertinent? The author is quite optimistic that the public (if given the opportunity) will embrace precautionary approaches to problems like climate change. Do you agree with him that democratizing decisionmaking might help to solve some of our most pressing environmental problems? Why or why not?