

Environmental Law and Policy: ENVS 450
Fall Semester, 2009
San Francisco State University
Wednesdays 7:00-9:45pm, Thornton Hall 248

Instructor:

Brent Plater bplater@sfsu.edu, 415-572-6989

Office Hour:

Wednesdays, 5:45-6:45 pm HSS 332

Required Reading: Environmental Law and Policy: Nature, Law, and Society (3rd Edition), Plater et al. In addition to the required text, supplemental materials may be assigned. These materials will be made available during the semester.

Course Overview

The primary purpose of this course is to provide students with an introduction to environmental law, legislation, and policy. The secondary purpose is to give students insight into how environmental lawyers think, write, and persuade. The course will begin by introducing basic environmental principles and exploring the limits of human nature in dealing with environmental degradation. We will then study environmental law from several perspectives, primarily through the examination of famous (and infamous) court decisions, environmental statutes, and everyday scenarios that illustrate the intricacies of environmental law.

It is assumed that students in this course have no background in legal studies, but do have an understanding of environmental issues. However, all information that students must know in order to meet the course expectations will be introduced and thoroughly discussed in class and/or through required readings.

Students are encouraged to ask questions in class and provide feedback regarding the course of the course, as it were. Adjustments in the course structure may be made as deemed necessary.

I hope you will enjoy the class as much as I enjoy teaching it.

Favorite Legal Stimulant Program

Due to the schedule and length of each class period, it is anticipated that students may, from time to time, become drowsy or inattentive, despite my best efforts to remain simultaneously entertaining and informative. To combat this unfortunate state of affairs, I will institute a "Favorite Legal Stimulant" program during this course. Under this program, a volunteer (or two) will bring their favorite legal¹ stimulant to class in quantities abundant enough to share with the entire class for the duration of the lecture. For example, a few pounds of chocolate covered espresso beans would be appropriate.

¹ Because this class is open to freshman (who may not yet be of age), because bringing such substances to class would violate school policy, and because alcohol is a depressant, not a stimulant, nicotine and alcohol, in addition to all other substances regulated by applicable law, will not be considered legal for the purposes of this program.

Expectations and Grading

You will be graded according to the following criteria:

Class participation, including on-call assignment:	20%
Draft in-depth paper:	20%
Mid-term exam:	20%
Final exam:	20%
Final paper:	20%

Class Participation: In addition to your attendance, which is required, class participation grades will be based both on the quality and quantity of your class conduct. I will be keeping track of attendance and class participation, the quality of which will be enhanced greatly by completing the required reading assignments for each class, and by remembering that our time together is a commons subject to enhancement (or degradation) by individuals to the benefit (or detriment) of the whole. A portion of your class participation will be based on keeping pace with the reading assignments: your pace will be evident by your engagement in the course. **In addition, a team of students will be “on-call” during each class and will be expected to lead discussion about topics on that class day.** You will find out which day you are a member of an on-call team at least one week in advance of the class. I will occasionally call on other students randomly to answer questions in the Socratic tradition. Keep your cell phones inaudible during class.

Draft and Final In-depth Paper: Each student will be required to write an in-depth position paper (approximately 4,000 words) about a local (San Francisco Bay Area), contemporary environmental policy or legal issue. The possible topics are almost infinite, but **you must meet and confer with me early in the semester (before September 5) to select an issue.** In the paper, you will be required to describe the environmental issue you select, discuss various proposals for resolving the issue, and then provide your assessment about the best overall solution to the environmental issue. Consider your audience to be a “decider” on the issue: someone who can decide if you are right or not and make change happen. Therefore, the focus of your writing should be on persuading the “decider” of your position, using relevant facts, reasoned arguments, and persuasive tools. The process of writing is ultimately a process of rewriting, and therefore you must **prepare a draft outline of your in-depth paper, with sources and some paragraph structure by October 28. Your final paper is due on December 2.** A template for a good draft outline, a good final paper, and more details will be provided later in the semester.

For paper ideas, consider reviewing San Francisco’s Department of the Environment website (www.sfenvironment.org); Bay Nature Magazine’s website (www.baynature.org); the Berkeley Ecology Center’s website (www.ecologycenter.org); the Bay Area Air Quality Management District’s website (www.baaqmd.gov); the National Park Service’s websites for the GGNRA and Point Reyes National Seashore; or the casebook for this course.

Mid-term Examination: The mid-term will cover approximately seven weeks of course material. The mid-term will consist of true/false, multiple choice, and short answer questions. The mid-term is a closed-book examination. **The mid-term exam will be on October 7.**

Final Examination: The final exam will be a traditional law school exam, consisting of essay questions that require you to spot relevant facts and analyze these facts using legal concepts taught in the course. The final exam will be cumulative, but it will be “open book”: you may bring your textbook, your notes, and some other reference materials and use them during the exam. The exam will require

you to write clearly and persuasively in a time-stressed environment. Details will be provided later in the semester. **The final exam will be on December 16.**

Anything covered in the readings and/or covered in class, is fair game for the exams. Do not presume that a topic assigned in the reading but ignored in class will not be tested.

EXTRA CREDIT - Public Comment: Every week dozens of government bodies hold public hearings on environmental issues. These hearings nearly always have opportunities for the public to comment on the decision; typically the time allotted for such comments is between one and three minutes. Each student in this course may obtain extra credit by attending a public hearing on an environmental issue of the student's choice and providing informed comments to the government agency about the issue. The comments should be persuasive: you must conduct research on the issue, take a position about what the best resolution of the issue would be, and then support your position with reasoned analysis and relevant facts. During the next class after delivering your comments, you will be given five minutes of class time to describe the issue to your fellow students, describe the forum where you spoke, deliver your comments to your student audience, and then field questions and feedback from your students about your public comment. **A maximum of 15 extra credit points may be awarded for this exercise**, but the maximum amount will decrease as the semester progresses. For example, if you are prepared to present your comments to your students during our first class, you are eligible for 15 points; if you are ready only by the second class, you are eligible for 14 points; the third class, 13 points; etc.

Graduate Writing Assessment Requirement: In order to use this course to satisfy the GWAR requirement, you must pass the course with a C grade or better. Furthermore, you must pass English 214 with a C- grade or better to use this course as your GWAR credit.

I believe that the process of engaging difficult material is an important exercise, and the value of that exercise often remains with students long after the content of the course material has been forgotten. For that reason I've designed a difficult course. However, I grade the course on a curve. Thus, it is possible that a 60% score on a quiz may deserve an "A," based on the overall difficulty of the quiz and the standing of your peers. The point is that low raw numbers do not necessarily equate with low grades in this course: if you engage the material and the course, there is a high probability that you will succeed. Conversely, if you are looking for a way to tune-out on your Wednesday evenings, this is probably not the course for you.

Students are expected to abide by the school honor code. Anyone caught signing-in another student on attendance sheets will be penalized. Anyone directing another student to sign them in despite their absence will also be penalized. Cheating on quizzes and/or the final exam will not be tolerated. It is disrespectful to me and your fellow students, and will be punished swiftly and severely.

Students with disabilities who need reasonable accommodations are encouraged to contact me as soon as possible. The Disability Programs Resource Center (phone 338-2472) is available to help with such requests.

Draft Syllabus

This syllabus may be modified during the course of the semester.

1. August 26: Administrative Matters; Introduction to Science, Ethics, and Law

- pp. 9-23: Ecology, Risk Management, and Environmental Law
- pp. 23-27: Environmental Ethics
- pp. 27-35: The Tragedy of the Commons
- pp. 96-102: A Summary of Cross Cutting Themes
- iLearn File: Introduction to American Law
- iLearn File: Introduction to Legal Cases
- iLearn File: Briefing Cases

2. September 2: The Nature of the Common Law

- pp. 103-107: Common Law Torts and Nuisance
- pp. 107-115: Boomer. **Be sure to brief Boomer for this class.**
- pp. 172-174: More on Permanent Damages
- pp. 125-134: Public and Private Nuisances
- pp. 137-141: Negligence
- pp. 141-145: Strict Liability

September 4: Last day to pick a paper topic

September 8: Last day to drop classes; last day to request audit grading.

3. September 9: Common Law Defenses and Relief; Persuasive Writing Class

- pp. 146-152: Common Defenses in Common Law Cases
- pp. 152-163: Causation, Strict Liability, and Proximate Causation
- pp. 165-172, 174-194: Remedies: Injunctions and Monetary Damages
- iLearn File: The Process of Writing
- iLearn File: Effective Style
- iLearn File: Developing Persuasive Arguments

4. September 16: Constitutional Law: Federalism, Preemption, Takings, and Hapless Toads

- pp. 328-340: Preemption: Express and Implied, Occupation of the Field, and Conflicts
- pp. 351-369: Limitations on Federal Power: Interstate Commerce v. the 10th Amendment
- pp. 1112-1115: Eminent Domain and Physical Takings
- pp. 1127-1128: Introduction to Regulatory Takings
- pp. 1142-1153; 1169-1172: The Supreme Court's Takings Jurisprudence

September 22: Last day to add course with a permit number

5. September 23: Administrative Law and the National Environmental Policy Act

- pp. 293-302: How Federal Environmental Laws Came to Pass (SKIM)
- pp. 378-387: Administrative Law in a Nutshell
- pp. 388-398: Overton Park
- pp. 471-498: NEPA
- pp. 520-522: NEPA Today

6. September 30: The Clean Air Act

pp. 551-568: Basics of the Clean Air Act
pp. 577-603: Implementation Plans

7. October 7: Mid-term Exam; The Clean Water Act

pp. 620-627: Basics of the Clean Water Act
pp. 629-635: Notes on the Effectiveness of the CWA
pp. 636-649: NPDES and TBELS
pp. 655-670: Water-Quality Based Permitting
pp. 671-673: Control of Non-Point Sources of Pollution

8. October 14: Superfund and the Resource Conservation Recovery Act

pp. 845-870: RCRA's Cradle-to-Grave Regulatory Framework
pp. 886-898: Remedial Strategies and Superfund
pp. 910-916: Who's Liable?
pp. 931-934: Setting Priorities

October 20: Last day to request Credit/No Credit grading option

9. October 21: Environmental Justice & Law

iLearn File: History of the EJ Movement
iLearn File: Principles of EJ
iLearn File: Toxic Waste and Race at 20
iLearn File: Caste from the Past
iLearn File: 1994 Clinton Executive Order on Environmental Justice
iLearn File: 2004 Inspector General Report on Implementation of the Executive Order
iLearn File: Environmental Justice Act (SKIM)
iLearn File: Environmental Justice Litigation: Another Stone in David's Sling (SKIM)
iLearn File: South Camden Citizens v. New Jersey

10. October 28: Draft Paper Outline Due; Protecting Public Lands: Federal Planning Statutes and the Public Trust Doctrine

pp. 1065-1074: The Public Trust Doctrine
pp. 1178-1199: The Bureau of Land Management, Grazing, and Public Lands
pp. 1208-1215: Public Lands and Resource Planning

11. November 4: Protecting Public Lands: The Tightrope Act in the National Park System

iLearn File: Bicycle Trails v. Babbitt
iLearn File: Fort Funston Dog Walkers v. Babbitt
iLearn File: Excerpt from Leash Law Petition

November 11: No class: Veterans Day

12. November 18: The Endangered Species Act

pp. 772-815: The Endangered Species Act

November 19: Last day to withdraw without documents

November 25: No class: Fall recess

13. December 2: Coastal Protection, Wetlands, Wild and Scenic Rivers, and Zoning

pp. 1216-1224: The Federal Coastal Zone Management Act

pp. 1233-1245: Section 404 of the Clean water Act and the Wild and Scenic Rivers Act

pp. 1245-1254: Planning, Zoning, and Smart Growth

14. December 9: Kyoto, Montreal, Ozone and Global Warming: International Law and Environmental Treaties

pp. 1257-1270: International Law

pp. 754-771: The Montreal Protocol and Technology Forcing Standards

pp. 1275-1290: Global Warming

iLearn File: Massachusetts v. EPA

pp. 1290-1305: International Institutions

15. December 16: Final Exam