

**ENVIRONMENTAL LAW**  
**Fall 2020**  
**Course Number 11962**  
**Section Number 5390**

Prof. Tracy Hester

**Class Hours: Monday-Wednesday 7:30 pm to 8:45 pm**  
**No physical classroom - online via Zoom**

**Office Hours:** I'll hold open office hours via Zoom on Tuesdays from 1:30 pm to 4:30 pm. When we can meet safely in person, I can also schedule a time with you in my office at TUII-142.

You can also reach me at 713-743-1152 or [tdheste2@central.uh.edu](mailto:tdheste2@central.uh.edu) to schedule a visit at any other time.

**Course Description: Welcome to Environmental Law!**

Environmental law is one of the most dynamic and exciting areas of legal practice, and it plays a pivotal role in protecting our personal health and welfare, guiding economic development and business life, and shielding our most precious natural treasures and resources from misuse or harm. Environmental lawyers explore and apply a complex set of federal and state statutory protections, administrative regulatory prohibitions, and convoluted judicial interpretations to handle challenges that cut across regulatory compliance, litigation, corporate transactions, criminal liability, and protection of vulnerable species and communities.

We will explore this broad field together with three goals:

- to acquaint you with the fundamentals of key federal and state environmental law programs, including how environmental law uniquely differs from other legal fields;
- to explore some of the most common legal strategies and analytical skills that govern this area (as well as other legal fields with strong administrative or regulatory dimensions), and
- to give you a fundamental legal toolkit of model documents and forms to help you handle your environmental legal projects in the future.

The class will use a combination of lectures, class discussions, case studies, in-class exercises and sample problems. Where possible, I'll introduce real-life on-going matters and projects to provide an opportunity to wrestle with some of the most active questions in current environmental practice. We will also use role-playing exercises to give you experience in environmental negotiations and enforcement situations.

As an outcome of taking this class, you should be able to identify key environmental legal issues that might affect government actions, business activities, human health, and environmental resources and species. In addition, you will learn to craft potential legal strategies and tools to oppose or promote actions that pose environmental risks or benefits.

### **Course Materials:**

We will use the following course book: R. Percival, C. Schroeder, A. Miller, and J. Leape, *Environmental Regulation: Law, Science, and Policy* (8th ed. 2018)

In addition, I'll distribute class handouts and supplemental materials as needed. We'll also the Blackboard class website where you can access additional optional materials as well as recordings of class lectures.

### **Assignments**

Our reading assignments will follow the course syllabus, although we may vary a bit in pace and coverage as the semester progresses (i.e., expect changes as we go). Of course, you should read each day's assigned materials in advance and be prepared to discuss them in class.

### **Class Participation**

In general, I will treat you in class the same way that I'd treat you as a new attorney working for me at a law firm. So please be prepared to discuss the readings assigned for that day as well as to think creatively about how to apply those materials to new situations and hypotheticals. I'll call on you randomly, but we'll make sure that everyone has a chance to participate in the discussion before the semester's end.

You will also have a limited number of opt-outs (no excuses necessary), but you can't get credit for the class unless you attend at least 80% of the sessions. You can also attend remotely via Zoom, but at this time you cannot use Zoom to attend for more than five classes over the semester without special permission.

## **Grading**

Your grade in this class will be based on a final examination. This exam will last for three hours, and will consist of three essay questions. You can use your personal notes or outlines that you create, your text book for this class, and any handouts. No commercial outlines or briefs, please. We'll discuss the final exam's format and other issues later in the semester.

I'll adjust grades by one notch (i.e., a half-grade) based on class participation as merited. It works both ways - you can raise your grade with energetic and insightful participation, or you can lower it by consistently failing to prepare adequately for class.

## **Personal Resources**

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus. Go to [http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html) .

## **Discrimination and Sexual Harassment/Misconduct Policy**

The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University system's Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here:

<http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d7.pdf>  
(antidiscrimination)

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d8.pdf>  
(sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource.

### **Week 1 (Aug. 24, 26)**

Introduction to Environmental Law.

Assignments:	Class 1	1-17, 41-52
	Class 2	29-41, 52-58

### **Week 2 (Aug. 31, Sept. 2)**

Common Law – Public and Private Nuisance.

Assignments:	Class 1	29-41
	Class 2	52-58

### **Week 3 (LABOR DAY HOLIDAY – class on Sept. 9 only)**

Overview of Federal Environmental Legal Framework.

Assignment: 93-104, 116-127, 137-142

### **Week 4 (Sept. 14, 16)**

Federal Clean Water Act – “Waters of the United States”, “Point Source”, “Discharge”, and “Pollutant”.

Assignments:	Class 1	657-673, 683-696
		<i>County of Maui v. Hawaii Wildlife Fund</i>

Class 2      696-704, 714-729  
Summary of Final Rule on Protection  
of Navigable Waters (4/1/20)

**Week 5 (Sept. 21, 23)**

Clean Water Act – Total Maximum Daily Loads, Wetlands Protections,  
Texas Clean Water Act

Assignment:      Class 1      772-801  
                         Class 2      729-751  
                         Texas Clean Water Act (excerpts)

**Week 6 (Sept. 28, 30)**

Clean Air Act – “air pollutant”, National Ambient Air Quality Standards,  
regulation of mobile sources.

Assignment:      Class 1      521-532, 571-595  
                         NAAQS Table  
  
                         Class 2      595-604, 610-630  
                         *One National Program Rule on Federal  
                         Preemption of State Fuel Economy  
                         Standards* (Sept. 19, 2019)

**Week 7 (Oct. 5, 7)**

Clean Air Act – New Source Review, Acid Rain, Hazardous Air Pollutants.

Assignment:      Class 1      630-640, 309 n.6 -315  
                         Class 2      640-655  
                         *Michigan v. EPA* (p. 1- 12)

**Week 8 (Oct. 12, 14)**

Climate Change Law – regulatory controls and tort liability.

Assignment:	Class 1	1244-1250, 530-556 Affordable Clean Energy Rule summary
	Class 2	<i>Juliana v. United States</i> (excerpts) <i>Comer v. Murphy Oil</i> (excerpts)

### **Week 9 (Oct. 19, 21)**

Resource Conservation and Recovery Act – hazardous and solid wastes, generators and transporters, disposal facilities.

Assignment:	Class 1	345-356, 361-380 <i>Definition of Solid Waste</i>
	Class 2	381-403, 407-409

### **Week 10 (Oct. 26, 28)**

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or Superfund) – National Contingency Plan, Potentially Liable Parties

Assignment:	Class 1	409-437
	Class 2	437-458

### **Week 11 (Nov. 2, 4)**

CERCLA – enforcement, cost recovery, allocation  
Environmental enforcement and citizen suits

Assignment:	Class 1	458-484
	Class 2	1139-1141, 1156-1159, 1180-1191

### **Week 12 (Nov. 9, 11)**

Endangered Species Act – Listing, Endangerment, Consultation, Takings

Assignment:	Class 1	999-1013, 1029-1058 <i>Weyerhaeuser Co. v. U.S. Fish &amp; Wildlife</i>
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Class 2 1058-1083  
Proposed rule to clarify definition  
of “habitat” (2020)

**Week 13 (Nov. 16, 18)**

National Environmental Policy Act – major actions, findings of no significant impact, environmental impact statements

Assignment: Class 1 911-914, 921-934, 948-955, 962-970,  
977-978, 986-992

Class 2 955-968, 971-972, 977-992  
*Proposed Revisions to NEPA Regulations*  
(excerpts), Council on Environmental  
Quality (March 2020)

**Week 14 (Nov. 23, then Thanksgiving holiday break)**

Environmental Justice.

Assignment: Executive Order 12,898  
Environmental Equity Act (introduced by Sens. Kamala  
Harris, Corey Booker, and Tammy Duckworth,  
2019) (excerpts)  
New Jersey S-232 (Environmental Justice Act,  
2d reading, June 25, 2020)

**Week 15 (Nov. 30, 2)**

Voluntary review session on Nov. 30. No class on Dec. 2.