

ENVIRONMENTAL LAW

Fall 2023

Course Number 5390

Section Number 18238

Prof. Tracy Hester

Class Hours: **Tuesday-Thursday 9:00 am – 10:30 am**
LAW[TBD]

Office Hours: I'll hold open office hours via Zoom on Wednesdays from 1:30 pm to 4:30 pm at [my office hours Zoom site](#). I'll also be available in my office at LAW341K.

You can also reach me at 713-743-1152 or 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* (9th ed. 2021)

In addition, I'll distribute class handouts and supplemental materials as needed. We'll also the Canvas 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 pursuant to an on-call roster (as we discussed in class), but I will expect everyone to jump into class discussions even if you're not on call.

Because of the pandemic, you can attend as many sessions via Zoom as you feel necessary to maintain your health and safety. I will teach physically in the classroom, and will keep an open Zoom session for every class. We'll also upload recordings of every Zoom session to the class Canvas website.

Grading

Your grade in this class will be based on a final examination. This exam will last three hours, and will consist of three essay questions (one hour each question). 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) 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 .

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.

Recording of Class

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the [Center for Students with DisABILITIES](#). If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform.

I will record all of our classes unless I specifically notify you otherwise. You may use my recordings for your own studying and notetaking, but the University does not authorize you to share them with *anyone* without my prior written approval. Per University policy, failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

Syllabus Changes

Due to the changing nature of the COVID-19 pandemic, please note that I may need to modify the course syllabus and may do so at any time. I'll announce those changes as quickly as possible through direct emails to all of you as well as postings to the class Canvas site.

Language Required by the University of Houston for All Syllabi:

COVID-19 Information

Students are encouraged to visit the University's [COVID-19](#) website for important information including on-campus testing, vaccines, diagnosis and symptom protocols, campus cleaning and safety practices, report forms, and positive cases on campus. Please check the website throughout the semester for updates.

Vaccinations

Data suggests that vaccination remains the best intervention for reliable protection against COVID-19. Students are asked to familiarize themselves with pertinent [vaccine information](#), consult with their health care provider. The University strongly encourages all students, faculty and staff to be vaccinated.

Reasonable Academic Adjustments/Auxiliary Aids

The University of Houston complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, pertaining to the provision of reasonable academic adjustments/auxiliary aids for disabled students. In accordance with Section 504 and ADA guidelines, UH strives to provide reasonable academic adjustments/auxiliary aids to students who request and require them. If you believe that you have a disability requiring an academic adjustments/auxiliary aid, please contact [the Justin Dart Jr. Student Accessibility Center](#) (formerly the Justin Dart, Jr. Center for Students with DisABILITIES).

Excused Absence Policy

Regular class attendance, participation, and engagement in coursework are important contributors to student success. Absences may be excused as provided in the University of Houston [Undergraduate Excused Absence Policy](#) and [Graduate Excused Absence Policy](#) for reasons including: medical illness of student or close relative, death of a close family member, legal or government proceeding that a student is obligated to attend, recognized professional and educational activities where the student is presenting, and University-sponsored activity or athletic competition. Under these policies, students with excused absences will be provided with an opportunity to make up any quiz, exam or other work that contributes to the course grade or a satisfactory alternative. Please read the full policy for details regarding reasons for excused absences, the approval process, and extended absences. Additional policies address absences related to [military service](#), [religious holy days](#), [pregnancy and related conditions](#), and [disability](#).

Week 1 (Aug. 22, 24)

Introduction to Environmental Law

Assignments: Class 1 1-16, 42-57
 Class 2 28-41

Week 2 (Aug. 29, Aug. 31)

Environmental Justice Law and Policy; Economic Bases for Environmental Regulation

Assignments: Class 1 16-28
 Class 2 28-41

Week 3 (Sept. 5, 7)

Common Law – Private Torts and Environmental Law

Assignments: 59-79

Week 4 (Sept. 12, 14)

Public Nuisance; Overview of Federal Environmental Legal Framework

Assignments: Class 1 79-92, 104-115
 Texas public nuisance statute
 Class 2 96-100, 116-126, 130-137, 149-159

Week 5 (Sept. 19, 21)

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

Assignments:	Class 1	577-590, 600-611
	Class 2	612-644

Week 6 (Sept. 26, 28)

Water Quality Standards and Introduction to TMDLs Clean Water Act – Total Maximum Daily Loads, Wetlands Protections, Texas Clean Water Act

Assignment:	Class 1	657-697
	Class 2	698-720

Week 7 (Oct. 3, 5)

Clean Air Act – Introduction; definition of “air pollutant”

Clean Air Act - Attaining and Maintaining National Ambient Air Quality Standards, regulation of mobile sources; New Source Review; Emissions Trading

Assignment:	Class 1	447-465, 480-502
	Class 2	502-524, 548-549

Week 8 (Oct. 10, 12)

Clean Air Act – Acid Rain, Hazardous Air Pollutants. Multi-state air pollution

Assignment:	Class 1	551-560; 266-277
	Class 2	561-576

Week 9 (Oct. 17, 19)

Climate Change Law – regulatory controls and tort liability

Assignment: Class 1 1104-1113, 525-547
 Class 2 127-129 (*Juliana v. United States*)
 Comer v. Murphy Oil (excerpts)

Week 10 (Oct. 24, 26)

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

Assignment: Class 1 299-328
 Class 2 328-346

Week 11 (Oct. 31, Nov. 2)

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

Assignment: Class 1 346-370
 Class 2 370-395

Week 11 (Nov. 7, 9)

Endangered Species Act – Listing, Endangerment, Consultation, Takings

Assignment: Class 1 901-914, 923-950
 Class 2 951-972

Week 13 (Nov. 14, 16)

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

Assignment: Class 1 395-415 (allocation)

 Class 2 CERCLA Negotiation Exercise
 1016-1040 (citizen suits)

NOTE: Voluntary refinery tour may be scheduled this Friday, 11/17

Week 14 (Nov. 21, then Thanksgiving holiday break)

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

Assignment: NEPA Implementing Regulations 1-49; prepare to apply
 generally to Galveston Coastal Barrier Project

Week 15 (Nov. 28, 30)

Voluntary review session on Nov. 28. No class on Nov. 30.

REQUIRED AND RECOMMENDED PROVISIONS FOR SYLLABI UNDER UNIVERSITY OF HOUSTON SYSTEM

Required Language for Courses with a Face-to Face Component

If you are experiencing any COVID-19 symptoms that are not clearly related to a pre-existing medical condition, do not come to class. Please see [Student Protocols](#) for what to do if you experience symptoms and [Potential Exposure to Coronavirus](#) for what to do if you have potentially been exposed to COVID-19.

Required Language for All Courses

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activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with *anyone* without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

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Recommended Language

Resources for Online Learning

The University of Houston is committed to student success, and provides information to optimize the online learning experience through our [Power-On](#) website. Please visit this website for a comprehensive set of resources, tools, and tips including: obtaining access to the internet, AccessUH, and Blackboard; requesting a laptop through the Laptop Loaner Program; using your smartphone as a webcam; and downloading Microsoft Office 365 at no cost. For questions or assistance contact UHOnline@uh.edu.

UH Email

Please check and use your CougarNet email for communications related to this course. To access this email, [login](#) to your Microsoft 365 account with your CougarNet credentials.

Webcams

Access to a webcam is required for students participating remotely in this course. Webcams must be turned on (*state when webcams are required to be on and the academic basis for requiring them to be on*). (Example: *Webcams must be turned on during exams to ensure the academic integrity of exam administration.*)

Title IX/Sexual Misconduct

Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and

must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

Security Escorts and Cougar Ride

UHPD continually works with the University community to make the campus a safe place to learn, work, and live. Our Security escort service is designed for the community members who have safety concerns and would like to have a Security Officer walk with them, for their safety, as they make their way across campus. Based on availability either a UHPD Security Officer or Police Officer will escort students, faculty, and staff to locations beginning and ending on campus. If you feel that you need a Security Officer to walk with you for your safety please call [713-743-3333](tel:713-743-3333). Arrangements may be made for special needs.

Parking and Transportation Services also offers a late-night, on-demand shuttle service called Cougar Ride that provides rides to and from all on-campus shuttle stops, as well as the MD Anderson Library, Cougar Village/Moody Towers and the UH Technology Bridge. Rides can be requested through the UH Go app. Days and hours of operation can be found at <https://uh.edu/af-university-services/parking/cougar-ride/>.

Helpful Information

Coogs Care: <https://uh.edu/dsa/coogscare/>

Student Health Center: <https://www.uh.edu/healthcenter/>