ENVIRONMENTAL LAW

Professor Katrina F. Kuh
Course 3812(A)
Mon/Wed 10:10am-11:30am, Roosevelt 010

Contact Information

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Student meetings: Students are always welcome to stop by my office; I am available most days after class. Students are also welcome to schedule an appointment or telephone conference.
Assistant: Doris Skura, Room 216, (516) 463-5878, Doris.I.Skura@hofstra.edu

Course Overview

This course explores domestic environmental law through the lens of emerging environmental debates and controversies. The course provides an overview of significant federal environmental statutes (including the Clean Air Act, Clean Water Act, Comprehensive Environmental Response, Compensation and Liability Act (Superfund), National Environmental Policy Act, Endangered Species Act, and Resource Conservation and Recovery Act), examines a range of approaches to addressing environmental harms (from common law suits to command and control regulation), and introduces students to contemporary issues in environmental law, including \textit{inter alia} the use of public nuisance theories to address environmental harms and the response to climate change under existing environmental statutes.

Course Goals

This course aims to equip students with a working knowledge of the most significant domestic environmental laws and prepare them to research and analyze environmental legal questions. These goals incorporate the following Learning Outcomes for Graduating Law Students:

- understand the roles and differing characteristics of sources of law: the common law; legislation, administrative regulations, and judicial interpretation of legislation, regulations, and constitutions [3(a)]
- understand the processes through which law is made and changed and how those processes differ from one source of law to another [3(b)]
- understand the different roles that state and federal law play in the process of lawmaking [3(c)]
- extract rules and policy from cases, statutes, and administrative regulations and analyzing, interpreting and arguing differing interpretations of rules and statutes [5(a)]
- identify legal issues in facts and applying rules and policy to facts [5(c)]
- construct arguments and identify flaws in an argument [5(e)].
Materials

• The required casebook is Percival, Environmental Regulation Law, Science and Policy (7th ed.).

• The syllabus also includes reference to some materials that are available on-line. Students should independently locate these materials using provided citations.

• I will periodically provide additional hand-out materials for individual class sessions.

Class Attendance and Participation

• I will call on students regularly during class and will consider class participation when writing student recommendations and with regard to grading, as described below.

• I reserve the right to adjust by one-half grade (B to B+ or B+ to B, etc.) the course grade of (1) any student whose contributions to class discussion and/or class participation are notable and exceptional (upward adjustment) or (2) any student who is unprepared when called upon or with otherwise poor class participation (downward adjustment). In-class use of the Internet may result in a downward adjustment.

• Students will occasionally be invited to use laptop computers during class exercises. However, during class discussion, I may request that students close and/or turn off laptop computers. Use of laptop computers and/or the Internet for purposes unrelated to class work is prohibited and may result in the downward adjustment of a student’s course grade.

• I will maintain a course TWEN site on Westlaw, available through www.lawschool.westlaw.com, assistance available at west.twensupport@thomson.com or 1-800-486-4876).

• A sign-in sheet will be available for each class. The sign-in sheet will be used to record and track attendance; falsification will be deemed a violation of the Code of Academic Conduct. Any student who misses 20% or more of scheduled classes (e.g., more than 6 classes) based on the sign-in sheet records is presumptively not in good and regular attendance and may be required to withdraw from the course or receive a failing grade, upon referral to and determination by the Office of Student Affairs. If you are unable to attend class due to illness, please send me an email, copied to my assistant Doris Skura (Doris.I.Skura@hofstra.edu) and your absence will be excused. I do not excuse absences for any reason other than student illness, although the Office of Student Affairs may do so if you are referred for excessive absences. I thus encourage you to retain documentation of any non-illness absence that you believe may ultimately be excusable (such as job interview, family emergency, or the like).
Examination and Grading

- Course grades will be based upon an in-class, closed book final examination, with class participation weighted as described above.

- Grade distribution will conform to any applicable grading curve in effect at Hofstra Law School.

Course Outline
Environmental Law

Introduction

Introductory Lecture

- Percival, pp. 1-7, 53-60

Using the Common Law to Prevent Environmental Harm: Nuisance

Introduction to Nuisance

- From Westlaw
  - *Stubbs v. City of Rochester*, 226 N.Y. 516 (1919)
  - Restatement (Second) of Torts §§ 821D, 822, 826-28, 829A

Public Nuisance (cont.)

- Percival pp. 26-28, 83-89 (*Georgia v. Tennessee Copper Co.*)
- From Westlaw
  - Restatement (Second) of Torts §§ 821B, 840E

Kuh, Environmental Law
The Regulatory Process

The Regulatory Process

• Percival pp. 168-90 (Sierra Club v. Costle, Chevron v. NRDC)
• From Westlaw
  o Andrew C. Revkin, Bush Aide Edited Climate Reports, N.Y. TIMES, June 8, 2005, 2005 WLNR 9049646

Regulatory Burdens: Chemical Exposures and the Toxic Substances Control Act

• Percival pp. 223-29, 242 (n.3)-244, 255-77 (Corrosion Proof Fittings v. EPA)

Command and Control

Clean Water Act (CWA)

CWA: Scope of Federal Authority

• For use as a reference while reading the above cases and during class discussion:
  o 33 C.F.R. § 328.3, Definition of Waters of the United States
  o The Federal Register publication of the proposed rule is not required reading, but was published at 79 FR 22188-01 (April 21, 2014), and is available here: http://www.gpo.gov/fdsys/pkg/FR-2014-04-21/pdf/2014-07142.pdf

National Pollution Discharge Elimination System (NPDES): Discharge, Point Sources

• Percival pp. 694-710 (National Mining Ass’n v. Army Corps of Engineers, South Florida Water Management District v. Miccosukee Tribe, Los Angeles County Flood Control District v. NRDC), 717-25 (United States v. Plaza Health Laboratories, Inc.)
**NPDES: Effluent Limits, Water Quality Standards, POTWs, Nonpoint Sources**

- 40 CFR § 405.12
- Handouts
  - SPDES Discharge Permit
  - Bear River/Malad River Subbasin Assessment and Total Maximum Daily Load Plan

**Endangered Species Act (ESA)**

**ESA: Consultation**

- Percival pp. 984-93 (*TVA v. Hill*), 1029-34 (*Thomas v. Peterson*)

**ESA: Take Prohibition**

- Percival pp. 1047-64 (*Babbitt v. Sweet Home*)

**Resource Conservation and Recovery Act (RCRA)**

**RCRA: Overview and Solid Waste**

- Percival, pp. 365-84 (*American Mining Congress v. EPA*)
- Handouts
  - Uniform Hazardous Waste Manifest
- Interested students may wish to peruse EPA’s website describing the status of the regulatory definition of solid waste, available at [http://www.epa.gov/waste/hazard/dsw/rulemaking.htm#2009](http://www.epa.gov/waste/hazard/dsw/rulemaking.htm#2009)

**RCRA: Hazardous Waste**

- Percival pp. 384-99 (*City of Chicago v. Environmental Defense Fund*)

**Alternatives to Command and Control**
Strict Liability:
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

CERCLA: Owners, Operators and Arrangers
- Percival pp. 411-17, 420-49 (New York v. Shore Realty Corp, United States v. Bestfoods, Burlington Northern & Santa Fe Railway Co. v. United States)

CERCLA: Strict, Joint & Several Liability, Remedy Selection and Natural Resource Damages
- Percival pp. 449-63 (Burlington Northern & Santa Fe Railway Co. v. United States)
- Handout
  - Jackson Steel Site Proposed Plan (excerpt)
- From LexisNexis
  - Brian D. Israel, Natural Resource Damages: The Basics, 5-32B Environmental Law Practice Guide §§ 32B.01, 32B.02[1][a], 32B.07

CERCLA: Allocation
Market Mechanisms: 
Clean Air Act (CAA)

CCA: Overview and National Ambient Air Quality Standards
- Percival pp. 569-92 (Lead Industries Ass 'n v. EPA, Whitman v. American Trucking Ass 'n)
- Handouts
  - EPA, Nonattainment Status for Nassau County
  - EPA, What Are the Six Common Air Pollutants? (excerpts)
- Westlaw

Nonattainment, Prevention of Significant Deterioration, and New Source Review
- Percival pp. 608-24 (Environmental Defense v. Duke Energy Corp.)

CCA: Cooperative Federalism
- Percival pp. 592-608 (Union Elec. Co. v. EPA, Virginia v. EPA, Alaska Dep’t of Envt’l Conservation v. EPA)

CCA: Cap and Trade, Acid Rain
- Percival pp. 624-37 (Alliance for Clean Coal v. Bayh)

CCA: Climate Change
- Please also review EPA’s proposed and existing regulation of greenhouse gas emissions under the CAA, http://epa.gov/climatechange/EPAactivities/regulatory-initiatives.html

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Information Strategies

National Environmental Policy Act (NEPA): Overview

- Percival, pp. 895-905 (Calvert Cliffs, Strycker’s Bay), 973-78

NEPA: Triggering Environmental Review


NEPA: Assessing the Adequacy of an EIS

- Percival pp. 953-73 (Vermont Yankee Nuclear Power Corp. v. NRDC, Sierra Club v. United States Army Corps of Engineers, Marsh v. Oregon Natural Resources Council)

Proposition 65 and the Emergency Preparedness and Community Right to Know Act (EPCRA)

- Percival, pp. 327-34, 339-47
- Handout
  - Town of Hempstead, Consumer Confidence Report (Safe Drinking Water Act)

Information and Environmentally Significant Individual Behaviors