Fall 2014
Tuesdays, 6 p.m. to 8:50 p.m. in Room 152 of Natural Resources Building

OVERVIEW
This course presents students with opportunities for learning about a broad array of natural resources and environmental law and policy and politics. It will provide students with an overview of federal, state, and local environmental law and acquaint each student with basic legal principles and procedures as well as current environmental issues.

INSTRUCTOR
Bob Wilson, J.D., M.B.A.
Senior Counsel to Senate Natural Resources and Environmental Affairs, Outdoor Recreation Committees
Cell Phone 517-896-9443
Office Hours: Available prior to class each Tuesday from 5:30-6:00, after class as time permits and for other pre-arranged meetings.
E-mail: bwilson@senate.michigan.gov

TARGET AUDIENCE
This course is structured for junior and senior undergraduate students and graduate and professional students interested in an overview of environmental and natural resources law. The course will be taught as a survey of federal and state environmental law.

MATERIALS
Required Text

Supplementary Materials
There is a required textbook (see above) as well as required set of Author Updates available at: http://www.aspenlawschool.com/books/plater_environmentallaw/author Updates.asp. Materials (e.g., articles, handouts, etc.), when possible, will be available to students enrolled in the course on the MSU ANGEL site for the course.

There will be one copy of the text placed in reserved reading in the MSU Main Library. Some students, in the past, have used previous versions of the text. If students do so, it is their sole responsibility to make sure they cover the material assigned in class (e.g., read the correct material, figure out the corresponding page numbers, etc.).
OFFICE HOURS
Professor Wilson will generally be available to meet with students before class from 5:30 until 6 and after class as time permits. Professor Wilson is also available for pre-arranged meetings on a case-by-case basis.

DESCRIPTION
The course will expose students to, as well as further their understanding of, the application of the U.S. legal and political systems to complex social conflicts with environmental and human health implications.

To enrich students' experience, this course is taught in some ways as it would be taught to law students and in other ways as a collaborative learning experience. Students are expected to have read the week’s materials and be able to intelligently engage in class room discussions.

The course will be broken down into three 50-minute sessions with 10-minute breaks in between each session. The instructor will typically talk current policy issues before the Michigan legislature, quickly recap the previous week’s session and then lecture on the topics for the current week during the first session. Lectures will be presented with weekly power point presentations, which will be posted in advance on the class website. Guest speakers will generally fill the second 50-minute session with student group presentations comprising the third session.

Since the depth and the breadth of the materials provided in the text is significant, the instructor will endeavor to provide a comprehensive survey of most of the critical elements found in the text and will supplement it with key examples of relevant Michigan environmental law.

COURSE OUTCOMES
The course will be taught in specific modules with a specific set of goals and desired objectives/outcomes and key discussion questions identified in the week’s module. The instructor will use two exams, regular class discussions, weekly group presentations, and written reports to assess student performance. See Course Outline below for specific objectives/outcomes for each module.

This course uses a standard "national" text and is designed to provide students with a fundamental foundation of the theories of significant U.S. environmental and natural resources law. The course will cover basic rules of law applicable to natural resource law and management policy. Since a significant emphasis will be on the legal relationships of parties and their legal obligations, court cases will be a focus of class discussions. We will also discuss the role of the Legislature and the Executive Branches and the role of interest groups and citizens in the development of environmental law.

The course is meant to provide all students with a fundamental working knowledge of U.S. and Michigan environmental law. Students should come away from this class with a solid grasp of the roles that common and statutory law play in the development of environmental law, an understanding of the impacts of politics, citizen interest groups and other external forces on the shaping of environmental law, and key current environmental issues.
DATE               MODULE

Sept. 2  Module One -- Introduction to CSUS 465

Objectives/Outcomes:

Class Introductions, Course Goals, Review Syllabus and Course Procedures, In-Class Assessment--Environmental Law, Life of a Case, Case briefing etc.

Sept. 9  Module Two -- Themes in Federal and State Environmental Law

Objectives/Outcomes:

Recognize the unique environmental perspective and how other perspectives play into policy/law-making.

Understand basic human behaviors as they relate to protection (or lack thereof) of natural resources.

Learn about a multi-dimensional first generation industrial pollution case and the forces that shape human actions. And statutes that followed!

Appreciate how politics often disrupts consistent, effective natural resource management.

Readings -- Chapters 1 and 2 -- Themes and Cross-Cutting Themes

Guest Speaker -- Erin McDonough, Former Executive Director, Michigan United Conservation Clubs.

Group Presentation – The Dilemma of the Salton Sea

Sept. 16  Module Three -- Role of the Common Law in Environmental Law

Objectives/Outcomes:

Recognize the unique contributions of case or common law to building body of Environmental Law.

Learn about key common law tort doctrines of trespass and nuisance (public and private).

See how common law can present a “bill for the costs” of certain actions. How citizens can influence policy through lawsuits.
Understand the significance of common law principles of causation, strict liability, and joint and several liability in conventional tort suits.

Study the use of damages—both actual and punitive as remedies for actions of defendants and of standard defenses to tort claims.

*Readings Chapter 3 -- The Common Law in Environmental Law*

Guest Speaker -- Tom Waters, Attorney, Fraser, Davis and Trebilcock Law Firm

Group Presentation -- Wind Turbines and Invisible Trespass

**Sept 23** Module Four -- Toxic Torts and Transition to Public Statutory Law

**Objectives/Outcomes:**

Grasp the complexity of toxic tort litigation—why these torts are treated differently?

Understand the critical need for reliable science and expert testimony and how science can be misleading.

Understand the special focus on strategizing in toxic tort litigation—multiple claims, multiple defendants, multiple defenses.

Understand social contexts of toxic tort litigation.

*Readings Chapter 4 -- Special Challenges of Toxic Tort Litigation*

Guest Speaker – Michael Campana, Director, Science/Research, LSB

Group Presentation -- Background and Details of the *Woburn Case*.

**Sept 30** Module Five -- History/Overview of Evolution of Statutory Law -- US and Michigan

**Objectives/Outcomes:**

Learn about growth of body of state and federal environmental statutes—another source of environmental law—most robust!

Recognize fundamental structural approaches to laws. Learn about Constitutional Federalism and role of states in a partnership with federal government. Wetlands Presentation is right on point here!

Learn about key treating-making powers and multi-state regional agreements.

*Readings -- Chapter 5 -- Overview of US Environmental Statutes and Chapter 7 -- Sovereignty/Federalism/Role of the States*
Guest Speaker—Trevor VanDyke, MDNR Legislative Liaison

Group Presentation—Game management and the Gray Wolf

Oct. 7

Module Six -- Role of Federal and State Agencies

Objectives/Outcomes:

Become familiar with the evolution of the role of both state and federal administrative agencies.

Become knowledgeable about the administrative process —rulemaking, guidance, operational memos—and how to challenge agency actions.

Understand why courts frequently defer to agency decisions.

Understand the role of citizen oversight of agency roles and responsibilities and the hurdles of standing.

Readings -- Chapter 6 -- Administrative Law

Group Presentation – To split or not to split—DEQ and DNR?

Review Session for Exam One conducted by Professor Wilson

Oct. 14

Exam One -- Covers Modules 1-6

Oct. 21

Module Seven -- Disclosure Strategies and the Philosophy of “Stop & Think” Approach to Regulatory Statutes, Stark Prohibition Statutes -- Endangered Species Act

Objectives/Outcomes:

Become familiar with one of the most significant statutory tools for requiring disclosure of agency actions—NEPA.

Learn about the treatment of NEPA in court and how it has influenced similar state disclosure statutes.

Explore the significance of “roadblock statutes and the use of the “strict prohibition” approach to regulation

Readings -- Chapter 8 -- Disclosure Statutes and Chapter 10 -- Roadblock Statutes

Guest Speaker -- Dave Hamilton, Regional Invasive Species Director, The Nature Conservancy

Group Presentation – Evaluating the options for Asian Carp Prevention Strategy—Who pays and why?
Module Eight -- Regulatory Standards -- Harm-Based and Technology-Based Clean Air and Clean Water Acts

Objectives/Outcomes:

Explore the structure of two of the most fundamental pieces of environmental regulation—the Clean Air and Clean Water Acts.

Understand their treatment in the courts.

Explore their application at the state and local levels with a particular focus on Michigan’s use of both statutes.

Readings Chapter 11 and Chapter 12 -- Harm-Based to Tech-Based Standards

Guest Speaker -- Kim Fish, Assistant Division Chief, Water Resources Division, MDEQ

Group Presentation – Expanding Regulatory Control of Waters of the US—Pros and Cons

Module Nine -- Remedial Liability Regulatory Strategies: CERCLA

Objectives/Outcomes:

Understand the forces that drove passage of CERCLA and its subsequent implementation.

Realize the significance of the broad net of liability cast by CERCLA through its key provisions—joint, several liability, easy to meet causation standard—almost strict liability—see connection to tort law?

Understand how the federal and state governments often work in concert on cleanups.

Readings -- Chapter 16 -- CERCLA

Guest Speaker – Michael Sniegowski, CMS Energy

Group Presentation – Changes in state cleanup procedures—more use based restrictions to achieve expedited cleanups—pros and cons.

Module Ten -- Life Cycle Waste Control -- RCRA

Course Objectives/Outcomes:

Become familiar with the most significant federal waste control statute—RCRA. Precursor to CERCLA—passed in 1976. See its multi-faceted approach to managing various forms of waste.
Learn about its treatment in the courts and changes in the statute to make it more compelling.

Understand its utility in providing more citizen suit access and how Michigan has used the statutory authorization to track its waste.

Readings -- Chapter 17 -- RCRA

Guest Speaker—Matt Flechter, MDEQ, Recycling

Group Presentation—Proposed OPG DGR nuclear waste facility in Ontario—policy and politics.

Nov. 18 Module Eleven -- Land Use Planning

Course Objectives/Outcomes:

Learn about the value of land use planning as an important natural resource protection tool.

Recognize the key role that the states and local units of government play in land use planning.

Consider how we can better engage the private sector in cooperative planning.

Consider how land use plans should be adaptive and flexible.

Readings -- Chapter 9 -- Land Use

Guest Speaker—Andy Such, Former Meridian Township Trustee

Group Presentation – The importance of local control in state wetlands, natural rivers programs.

Nov 25 Module Twelve -- Public Trust Doctrine, Other Rights & Duties

Course Objectives/Outcomes:

Become familiar with the Public Trust Doctrine (PTD) and its application to natural resource protection.

Learn about the evolution of the doctrine and how it is regarded in the courts.

See its potential for future application in key natural resources areas as a foundation for maintaining resource base for future generations.

Readings -- Chapter 20 -- Public Trust and Other Rights and Duties

Guest Speaker – Julie Metty-Bennett, Public Sector Consultants
Group Presentation -- Making the case that all natural resources should be subject to public trust responsibility—Michigan Constitution, Article IV, section 52 and other relevant laws.

Dec. 2  Module Thirteen -- Private Property & Public Rights

Course

Objectives/Outcomes:

Learn about constitutionally-guaranteed private property rights and how far the government can go to restrict private property use for public good?

Look into the Balancing Test that courts often engage in (what are they balancing?).

Look at the Basic Inquiries in judicial review of regulations.

Learn about Eminent Domain and Inverse Condemnation

Readings -- Chapter 21 -- Private Property and Public Rights

Group Presentation – Beach grooming and the clash between public trust and protecting private property rights -- which is the more compelling interest and why?

Review Session for Exam Two conducted by Professor Wilson

Dec. 9  Exam Two -- Covers Modules 7-13
RESERVATION
The instructor reserves the right to make minor modifications to this syllabus.

CLASS ROOM LOGISTICS
The class will be located in Room 152 of the Natural Resources Building. Students will be asked to use name cards for the first few weeks until the instructor can become acquainted with the students’ names.

INSTRUCTION AND GRADING COMPONENTS

A. Attendance (Two or more unexcused absences will lower your final grade)
Attendance is mandatory. Class meets once each week and the course content is considerable. Furthermore, participation in class is a shared responsibility and each student is expected to participate regularly. Attendance will be taken each class session and students must be in class for the full session to receive attendance credit. If a student has two or more unexcused classes, their final grade may be subject to being lowered (e.g., 3.5 reduced to 3.0).

B. Attendance/Participation (5% or 25 points)
There is an expectation that each student will be fully prepared and will be able to participate in class.

Participation means:
1) Completing the assigned readings
2) Answering questions when called upon
3) Positive collaboration in class group exercise
4) Asking and answering appropriate questions during class

Students should expect to be called upon to answer questions in every class. If a student is called upon during class for a contribution pertaining to class and that student is unable to participate because he or she is unprepared, the instructor will record this and it will be factored into a student’s course grade (i.e., may result in the students grade being lower than test scores, etc.). Students will also be expected to volunteer without being called upon. Poor participation as evidenced by poor preparation, evidence of not having read the material, not turning in on time and/or complete assignments etc. will be taken into consideration in a student’s final grade. Significant poor or disruptive participation may result in student’s final grade being lowered relative to his/her scores on exams, papers, etc. (e.g., 3.5 down to 3.0).

C. Exams (80% or 400 total points)
There will be two exams during the semester, each exam will be worth a total of 200 points for a grand total of 400 points. There is no final exam that will cover the entire course. Exams will contain short answer type questions (e.g., multiple choice, true/false, fill-in blank) as well as some essay questions. Unexcused absences from exams will result in the grade of zero (0) for the missed exam. Cheating, copying, collaborating on exams and other misconduct will result in students involved receiving a 0.0 for the course.

D. Class Presentations with Written Reports (15% or 75 points)
The class will be divided up into small groups of students for purposes of conducting group presentations on current environmental law issues as assigned by the instructor. Students will be given the opportunity to create their own groups and volunteer for the weekly presentations. These presentations and accompanying written report should:
1) identify the current environmental issue(s);
2) describe various legal arguments/positions/rationales that relate to the
issue; 3) explain the status of the legal dispute or issue; and 4) provide citations to the research and other materials used in the paper. These papers must be well-written, proofread, and properly sourced/referenced. It is expected that all group members will make a substantive effort in both the written report and the class presentation.

E. Turning in Papers
Students MUST submit their written reports electronically to the course website (Angel) in a timely manner (at or before time of presentation to the class) for credit to be received. With the instructor’s approval, an electronic copy may be e-mailed to the instructor. Students MUST retain a copy of all papers submitted. Failure to do so may be used against the student in any question with the instructor over submission of work and or sufficiency/grade of the said item.

F. Final Grades
Students’ final grades will be initially based on the results of their two exams (80%), papers (15%), and participation (5%). Then penalties and bonuses will be applied (see below). The instructor intends to use the following scale for grading purposes with 500 total points possible for the course:

<table>
<thead>
<tr>
<th>Points</th>
<th>Percentage</th>
<th>Grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>450-500</td>
<td>90-100%</td>
<td>4.0</td>
</tr>
<tr>
<td>430-449</td>
<td>85-89%</td>
<td>3.5</td>
</tr>
<tr>
<td>400-429</td>
<td>80-84%</td>
<td>3.0</td>
</tr>
<tr>
<td>375-399</td>
<td>75-79%</td>
<td>2.5</td>
</tr>
<tr>
<td>350-374</td>
<td>70-74%</td>
<td>2.0</td>
</tr>
<tr>
<td>325-349</td>
<td>65-69%</td>
<td>1.5</td>
</tr>
<tr>
<td>250-324</td>
<td>50-64%</td>
<td>1.0</td>
</tr>
<tr>
<td>0-249</td>
<td>0-49%</td>
<td>0.0</td>
</tr>
</tbody>
</table>

G. Bonuses and Penalties
As discussed above under Attendance and Participation, a student’s final grade for the course may be downgraded if they are excessively absent (two or more unexcused absences) and/or if they are frequently unprepared. The final grade penalties, if any, will be applied after computing the students’ grades based on homework and exam results. Likewise, students who exhibit extra effort, contributions that bring added value to the course, etc. will be eligible for consideration for some bonus points in the final assignment of course grades.

POLICY ON EXCUSES
Students are expected to attend each class, submit assignments on time, and take exams at the regularly scheduled time unless an acceptable reason as per MSU policy is offered. Acceptable reasons include illness, religious observances, family emergency, or conflicts with other final exams (if verified or validated). Students are expected to notify the instructor ahead of time whenever possible and in all cases as soon as possible, in writing (e.g., e-mail) or in person if they cannot attend class, submit written assignments, or take an exam. If legitimate reasons are presented in a timely and reasonable manner, arrangements can be made to acquire class notes, submit work, take exams, etc.

INCOMPLETE WORK AND DEFERRED GRADES
Unexpected circumstances may cause a student to request a final grade of Incomplete (I) or Deferred (DF). Requests must be made in writing before the date of the final exam stating the reason(s) for the request and a plan for removal of the I or DF grade. University policy requires that work to remove an I be completed by the 5th week of the next semester in attendance or the
grade automatically becomes an F. A DF grade (available only to graduate students) must be removed within two calendar years.

**POLICY ON PHONES/LAPTOPS/PERSONAL TECHNOLOGY IN CLASS**

Students will be permitted to use laptops and tablets during class but students are still expected to pay attention and participate in class. If this privilege is abused, the instructor reserves the right to alter this policy.

**INDEPENDENT WORK REQUIRED AND POLICY ON ACADEMIC INTEGRITY**

“The principles of truth and honesty are recognized as fundamental to a community of teachers and scholars. The University expects that both faculty and students will honor these principles and in so doing protect the validity of University grades. (Excerpted from *A University Policy on Integrity of Scholarship and Grades*).

As the MSU Ombudsman points out ([https://www.msu.edu/unit/ombud/dishonestystud.html](https://www.msu.edu/unit/ombud/dishonestystud.html)), the following conduct violates the fundamental principles of truth, honesty, and integrity:

* Supplying or using work or answers that are not one's own;
* Providing or accepting assistance with completing assignments or examinations;
* Interfering through any means with another's academic work;
* Faking data or results.

Therefore, don't:
* Turn in an exam, paper, or project that is not wholly your own work;
* Copy answers from another student's exam or test;
* Get questions and/or answers from students who have already taken an exam or quiz you are scheduled to take;
* Have another person take a test for you;
* Submit the same paper for two or more classes;
* Use other authors' ideas, words, or phrases without proper attribution; and
* Collaborate with other students on projects or assignments without your instructor's permission.

The instructor reserves the right to issue a final grade of F (failure) or to lower the course grade for any student who violates the MSU Policy on Academic Integrity, who submits other persons’ work as their own, or who submits their own work for a grade in this class that has been or will be submitted to another class for credit of any kind.

Once again, as the MSU Ombudsman ([https://www.msu.edu/unit/ombud/dishonestystud.html](https://www.msu.edu/unit/ombud/dishonestystud.html)) notes:

If your instructor believes you have committed an act of academic misconduct, s/he may give you a penalty grade, which is defined as any grade based on a charge of academic misconduct. A penalty grade may include, but is not limited to, a failing grade on an assignment or in the course. When this occurs, the Integrity of Scholarship and Grades policy (ISG) requires your instructor to report the academic misconduct to your dean through an electronic Academic Dishonesty Report, which will end up in your student folder, and also asks if your instructor wants to request an academic disciplinary hearing to impose sanctions in addition to the penalty grade. Additional sanctions include probation and/or suspension from your program or the University for a designated time.