

CSUS 465
Environmental and Natural Resources Law

Spring 2018
Tuesdays 6-8:50 pm.
152 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.

Executive Director of Michigan Trails

Former 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: mitrail1955@gmail.com

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

Zygmunt Plater, Robert Abrams, William Goldfarb, Robert Graham, Lisa Heinzerling, David Wirth, and Noah Hall. 2010. Environmental law and policy: nature, law, and society, 4th edition. We will discuss more in our opening class!

Supplementary Materials

Materials (e.g., articles, handouts, etc.), when possible, will be available to students enrolled in the course on the MSU D2L website 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 5 to 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.

The course will be taught in specific modules with a specific set of goals and desired 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.

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.

COURSE OUTLINE & READING ASSIGNMENTS (Please note -- Instructor may fine tune reading assignments the week prior to each assignment.)**DATE****MODULE**

Jan 9

Module One -- Introduction to CSUS 465

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

Jan 16

Module Two -- Themes in Federal and State Environmental Law

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

Cases: Hardin's Tragedy of the Commons, Road Salt Paradigm and Kepone Case Study

Guest Speaker – Rachel Plawecki, Legislative Director for Rep. Camilleri

Group Presentation – How to convince policymakers to consider/factor long term costs into decisions that impact natural resources?

Jan 23

Module Three -- Role of the Common Law in Environmental Law (Part 1)

Readings Chapter 3 -- The Common Law in Environmental Law

Cases: Borland v Sanders, Roth v Cabot Oil, Branch v Western Reserve, Mangan v Landmark 4, NY v Schenectady

Guest Speaker –

Group Presentation – Should citizens be able to sue for protection of natural resources in the state? Pros and Cons.

Jan 30

Module Four – The Role of the Common Law in Environmental Law (Part 2)

Readings Chapter 3 Continued

Cases: Velsicol Chemical v Rowe, Pruitt v Allied Chemical, Boomer v Atlantic Cement, Village of Wilsonville v SCA, Branch v Western Petroleum

Guest Speaker – Aaron Davis, Senior Associate, Fraser Davis and Trebilcock, P.C.

Group Presentation – The corporate conscience and has common law really helped to redirect corporate behavior and compliance with the law?

Feb 6

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

Readings -- Chapter 5 -- Overview of US Environmental Statutes and Chapter 7 -- Sovereignty/Federalism/Role of the States

Cases: Utilex Case File, City of Philadelphia v NJ, Missouri v Holland

Guest Speaker— Mike Sniegowski, Consumers Land

Group Presentation—How to regionalize natural resources management—getting states to work more in concert to protect natural resources that are not bound by politically drawn boundaries.

Feb 13 **Module Six -- Role of Federal and State Agencies**

Readings -- Chapter 6 -- Administrative Law

Cases: Rybachek v EPA, Hiram Hill v TVA, Citizens to Preserve Overton Park v Volpe, Scenic Hudson v FPC, Vermont Yankee v NRDC, Chevron USA v NRDC

Group Presentation – Are state and federal agencies really the fourth branch of government and how to reform agency behavior to make them more accountable to the public.

Review Session for Exam One conducted by Professor Wilson

Feb 20 **Exam One -- Covers Modules 1-6**

Feb 27 **Module Seven -- Disclosure Strategies and the Philosophy of “Stop & Think” Approach to Regulatory Statutes, Stark Prohibition Statutes -- Endangered Species Act**

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

Cases: Mid States Coalition v STB, Center for Biological Diversity v NHTSA, TVA v Hill, Babbitt v Sweet Home, National Assoc of Homebuilders v Defenders of Wildlife

Guest Speaker – Nicole Toman, Regulatory Unit Manager, MDNR

Group Presentation – Michigan’s prohibited species act—who should control the list of prohibited and restricted species-the agencies or the legislature?

SPRING BREAK MARCH 5-12

Mar 13 **Module Eight -- Regulatory Standards -- Harm-Based and Technology-Based Clean Air and Clean Water Acts**

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

Cases: Whitman v American Trucking, Michigan v EPA, In Re Northern Michigan, Mass v EPA

Guest Speaker – Sean Hammond, MEC Deputy Director or Kim Fish, MDEQ

Group Presentation – Should corporations and persons be responsible for the costs of pollution when there are no promulgated standards and no known technology to treat those forms of pollution?

Mar 20 **Module Nine -- Remedial Liability Regulatory Strategies: CERCLA**

Readings -- Chapter 16 – CERCLA

Cases: *Burlington v US, US v Wade (II), US v NEPACCO, US v Best Foods, US v Atlantic Research*

Guest Speaker – Sue Leeming, MDEQ

Group Presentation – The history of funding orphan sites of contamination and how should we fund these kind of cleanups in the future.

Mar 27

Module Ten -- Life Cycle Waste Control -- RCRA

Readings -- Chapter 17 – RCRA

Cases: *Hazardous Waste Treatment v EPA and Meghrig v KFC Western*

Guest Speaker—Matt Flechter, MDEQ, Recycling

Group Presentation—Is recycling ethic really being developed in our nation's citizens and if not why not? What are the keys to a successful state recycling program?

Apr 3

Module Eleven -- Land Use Planning

Readings -- Chapter 9 -- Land Use

Cases: *Bersani v EPA, Norton v Southern Utah, Kleppe v New Mexico*

Guest Speaker— Brian Beachamp, TART Trails

Group Presentation – Why is it so hard for local units of government to work together for regionalized land use management plans and what reforms can we make to encourage more effective local partnerships?

Apr 10

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

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

Cases: *Marks v Whitney, Paepke v Building Commission, National Audubon v Sup ct of Alpine County (Mono Lake case), Defenders of Florissant v Park Land*

Guest Speaker – Julie Metty-Bennett, Public Sector Consultants

Group Presentation – Which branch of government should ideally be charged with protecting the public trust? Does protecting the public trust involve more than simply protecting natural resources?

Apr 17

Module Thirteen -- Private Property & Public Rights

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

Cases: Thornburg v Port of Portland, Penn Coal v Mahon, Palazzolo v Rhode Island.

Group Presentation – Do citizens in Michigan have an obligation to sacrifice part or their private property rights in order to protect the public trust?

Review Session for Exam Two conducted by Professor Wilson

Apr 24

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. 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:

450-500 pts	90-100%	4.0	A
430-449 pts	85-89%	3.5	A-/B+
400-429 pts	80-84%	3.0	B
375-399 pts	75-79%	2.5	B-/C+
350-374 pts	70-74%	2.0	C
325-349 pts	65-69%	1.5	C-/D+
250-324 pts	50-64%	1.0	D
0-249 pts	0-49%	0.0	F

F. 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>), 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>) 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.