

MOREHEAD STATE UNIVERSITY
FALL 2007

Government 324
ENVIRONMENTAL LAW AND POLICY

105 Rader Hall, 10:20 MWF1

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ENVIRONMENTAL LAW, POLITICS, AND POLICY

Our environment is a matter of unsurpassed importance, but it is threatened by how we live our individual lives and how private corporations conduct their businesses. We have polluted the skies with acid rain and destroyed the ecosystems of lakes, polluted rivers with sewage and industrial byproducts, stripped the land to harvest trees and coal, and buried the refuse of our lives below the earth's surface. We have endangered our lives and other living things who inhabit this planet.

What have our state and national governments done about this environmental degradation? Congress and state legislatures have enacted statutes defining environmental policies; federal and state agencies have expanded the meaning of these statutes by exercising their legislatively-delegated power to write regulations and enforce statutes; and federal and state courts have interpreted these policies when they have decided cases which have raised questions about the enforcement of statutes and regulations. Our national government has negotiated treaties with other nations to address global environmental problems. Politics has defined the creation of these policies and the struggle over their enforcement.

We will begin our study of environmental law and policy in Woburn, Massachusetts, the setting of *A Civil Action*. We will view this story of poisoned wells and discuss the legal issues it raises. We will analyze state court cases which use common law of nuisance and the public trust doctrine to address environmental problems. Then we will analyze federal court decisions which address statutory and constitutional questions about major federal environmental laws. Finally, we will examine the actions the international community and the United States have taken to address the environmental problems created by acid rain, ozone depletion and global warming and conclude by viewing Al Gore's *An Inconvenient Truth*.

REQUIRED READINGS:

Walter Rosenbaum, *Environmental Politics and Policy*, 7th ed., 2008.

Roger Findley and Daniel Farber, *Environmental Law in a Nutshell*, 6th ed., 2004.

William Green, *Environmental Law and Policy*, 20th ed., 2007.

In the Assignment section, the articles marked with an asterisk (*) are required reading and available at the Blackboard course site: <http://www.moreheadstate.edu/units/distance> .

ASSIGNMENTS:

1. Environmental Law and Politics: August 22

Rosenbaum, "After Earth Day," 1-24

2. State Common and Statutory Law: August 24 -September 12

A. A Civil Action

John Travolta, *A Civil Action*, video.

Green, "A Civil Action Questions," C.1

*Zigmunt Plater, "Lessons from the Woburn Toxic Civil Action," from his *Environmental Law and Policy*, 1998.

B. Common Law Issues

1. Common Law Overview

Green, "State Common Law and the Environment," D.1

2. Nuisance

Findley and Farber, "Common Law Remedies," 74-78 and 213-21

Green, "Primer on Case Briefing," A.1-13

Boomer v. Atlantic Cement (1970), B-1

3. Public Trust

Findley and Farber, "Public Trust Doctrine," 237-40, and "Navigational Servitude," 240-44

Green, "Public Trust Doctrine," H.1

National Audubon Society v. Los Angeles Dept. of Water and Power (1983)

*Summary of Mono Lake Litigation and www.monolake.org

C. Hypothetical Problem

Jefferson Citizens v. Jefferson Highway Department, J.1

*Zygmunt Plater, "Salting the Earth," from his *Environmental Law and Policy*, 1998 and F.1

3. Federal Regulatory Statutes: September 17 - October 31

A. Political, Governmental, and Policy Settings

Rosenbaum, "Making Policy: The Process," 27-61

www.sierraclub.org, www.environmentaldefense.org, www.ndrc.org, www.foe.org, www.nwf.org, www.earthfirst.org
www.environmental-action.org, www.worldwildlife.org, www.greenpeace.org, www.earthliberationfront.com

Rosenbaum, "Making Policy: Institutions and Politics," 65-110

B. Environmental Groups and Judicial Access, Review and Remedies

Findley and Farber, "Judicial Review of Government Decisions," 1-20

Green, "Scenic Hudson v. Federal Power Commission," H.2, and "Sierra Club v. Morton," H.4

*Alan Talbot, "The Hudson River Settlement," from his *Settling Things*, 1983.

Scenic Hudson Preservation Conference v. FPC (1965), *Sierra Club v. Morton* (1972), and

*Linda Greenhouse, Justices Say EPA Has Power to Act on Harmful Gases," *New York Times*, April 3, 2007.

Massachusetts v. Environmental Protection Agency (2007)

Exam 1: October 3

D. Statutory Law Overview

Green, "Federal Environmental Strategies," D.3

E. National Environmental Policy Act

Findley and Farber, "National Environmental Policy Act," 21-35

Sierra Club v. Marsh (1985), and *South Carolina v. O'Leary* (1995)

F. Environmental Protection Agency and Pollution Control Issues

1. Environmental Protection Agency

Rosenbaum, "The Environmental Protection Agency," 84-95

*Gregg Easterbrook, "Christie Todd Whitman May Have the Most Thankless Job in Washington," *New York Times Magazine*, August 19, 2001.

www.epa.org

2. Clean Air Act

Rosenbaum, "Regulation Strategies: Command and Control vs. the Marketplace," 158-70; "Political Anatomy of Command and Control," 175-80, and "Regulating Air Quality," 180-96.

Findley and Farber, "Regulation Under the Clean Air Act," 78-85

Massachusetts v. Environmental Protection Agency (2007) and *American Lung Association v. EPA* (1998)

3. Clean Water Act

Rosenbaum, "Regulating Water Quality," 196-213.

Findley and Farber, "Regulation Under the Clean Water Act," 104-113

Arkansas v. Oklahoma (1992)

4. Comprehensive Environmental Resource Conservation and Liability Act (Superfund)

Rosenbaum, "A Regulatory Thicket: Toxic and Hazardous Substances," 217-48

Findley and Farber, "Toxic Chemicals, Genetically Modified Organisms, and Hazardous Wastes," 184-203

U.S. v. Fleet Factors (1990)

G. Natural Resource Issues

1. Endangered Species Act

Findley and Farber, "Remedies," 18-20; and "Preserving Endangered Species," 263-67

Green, "Tennessee Valley Authority v. Hill," H.6

Tennessee Valley Authority v. Hill (1978) and *Babbitt v. Sweet Home Chapter* (1995)

2. Public Lands

Rosenbaum, "Department of Interior," 93-95, and "635 Million Acres of Politics," 289-326

Findley and Farber, "Protection of Public Lands," 253-63

South Utah Wilderness Society v. Dabney (2000)

H. Hypothetical Problem

Jefferson Citizens v. Jefferson Highway Department, J.1

4. Federal Constitutional Provisions: November 2-14

A. Constitutional Law Overview

Green, "Constitutional Law and Environmental Policy," D.5

B. Preemption and Nuclear Power

Rosenbaum, "Nuclear Twilight," 256-67, and "Cold War Wasteland," 270-75

Findley and Farber, "Federal Preemption," 66-70

Silkwood v. Kerr-McGee (1984)

C. Commerce Clause, Strip Mining, and Landfills

Findley and Farber, "Commerce Power," 46-55, and "Commerce Clause Restrictions on State Power," 58-65

Hodel v. Virginia Surface Mining and Reclamation (1981)

Fort Gratiot Sanitary Landfill v. Michigan (1992)

D. Takings Clause and Zoning

Findley and Farber, "The Takings Problem," 227-37

Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency (2002)

E. Hypothetical Case

Jefferson Citizens v. Jefferson Highway Department, J.1

5. International Legal Issues: Climate Change: November 16 - December 7

Rosenbaum, "The United States and Climate Diplomacy," 330-65

*Intergovernmental Panel on Climate Change, Reports 1, 2, and 3, 2007, <http://www.ipcc.ch>

*Jim Hansen, "The Threat to the Planet," *New York Review of Books*, 12-16.July 13, 2006.

Al Gore, "An Inconvenient Truth," video. www.climatecrisis.net

*Greg Easterbrook, "Global Warming: Who Loses and Who Wins," 52-64, *The Atlantic*, April 2007.

*Sharon Begley, "Global Warming is a Hoax," *Newsweek*, August 13, 2007.

6. Concluding Activities: December 8

Course Information Questionnaire Form, J.1

Self-Assessment of Discussion Group Participation Form, I.3

Assessment of Discussion Group Members' Participation, I.5

EXAM #2: December 13, 10:15-11:15

CLASS ATTENDANCE AND ABSENCES

Class attendance is mandatory, because this course will focus on the discussion of readings and cases. Exams will be based on the cases and readings. If you fail to attend class on a regular basis, your course grade will suffer. Tape recordings of classes will be permitted only with my prior approval which will be limited to cases of documented medical necessity.

COURSE GRADE:

1. Basis for Course Grade and Grading Scale

Your course grade will have 4 parts: 1) panel discussions of court cases (11%), 2) group discussions of readings and the hypothetical case (11%), 3) readings assignments, 11%, and two examinations: 33.5% each, 67% total.

I will use the following plus-minus scale to evaluate each part of your course grade: A+=4.3, A=4.0, A-=3.7, A-/B+= 3.5, B+=3.3, B=3.0, B-=2.7, B-/C+= 2.5; C+=2.3, C=2.0, C-=1.7, C-/D+=1.5; and D+=1.3, D=1.0, D-=.7

2. Panel Discussions of Court Cases. You will individually author your case briefs using the "Primer on Case Briefing " and "Case Brief Form" in Green, *Environmental Law and Policy*. You will brief 1 ungraded practice case and hand it in at the end of the class for which it is assigned. Thereafter, you will write several case briefs prior to the classes for which they are assigned. You and other students assigned the case will use your briefs to discuss the case with me on the day assigned.

If you know you will be absent on the day you are assigned a case, you must inform me as soon as possible or you will receive a failing grade on your case. I will allow a make-up case only in extraordinary circumstances. You are not excused from class attendance and participation and note taking, just because you are not assigned to discuss a case.

Your grade will be based on your in-class discussion of these cases. You will not be graded on your briefs, but you must hand them in at the end of the class during which they are discussed or you will not receive a grade for your participation. Your case grade will have 2 bases: 1) your ability to pay attention to and follow the discussion, your preparedness to answer questions, and your willingness to volunteer answers; and 2) your ability to answer questions about the case, its legal terms and concepts, and related material in the assigned readings, in a clear, concise, and thorough manner with only minimal reference to your case brief.

3. Readings and Hypothetical Problem Assignments. You will read the Rosenbaum book and articles in the Assignments section. I will hand out assignment questions which you will answer prior to class devoted to their consideration. You will research the hypothetical problem on highway salting using the Findley and Farber and then summarize your research using the "General Hypothetical Case Form" in Green, *Environmental Law and Policy*.

To receive credit for these assignments, you must 1) complete them before class, 2) attend the entirety of the class, and 3) hand in your assignments at the end of the class. If your assignment substantially complies with its requirements, you will receive a check. A check is 1 point. I will not accept excuses for late assignments, because the credit you receive on your assignments will be based on 3 less than the total number of assignments.

4. Group Discussions of Readings and Hypothetical Problem and Cases. In your group discussions of the readings and hypothetical case, you have 2 leadership responsibilities. 1) First, you have a task leadership responsibility: to suggest how to address issues, direct attention to relevant cases and legal principles, identify relationships and sources of difficulty, and evaluate the workability of alternative solutions. 2) Second, you have a social leadership responsibility: to encourage participation by all members, be open, friendly, and responsive to the opinions and ideas of other members, and persuade members to analyze their differences and search for common ground. Your discussion grade will have 2 bases: 1) my observation of your group participation in terms of your fulfillment of the responsibilities identified above, and 2) your self assessment using two forms in Green, *Environmental Law and Policy*.

5. Examinations. You will take 2 one hour in-class examinations which will require you to know legal and political principles and apply them to the solution of environmental law and policy problems. The first exam will deal with all the material presented since the beginning of the course. The second exam will consider only the material since the first exam. There will be no comprehensive final exam. Plan now to take these exams when they are scheduled. Attendance is mandatory. Make-up exams will be given solely at my discretion only in extraordinary circumstances and on the basis of an excuse provided prior to the examination.

INSTRUCTIONS FOR WRITING CASE BRIEFS, HYPOTHECTICAL CASES AND READINGS

Your case briefs, readings, and hypothetical case assignments must comply with the following 6 requirements.

- 1) Type your assignment.
- 2) Use 8-1/2 X 11 paper and 1 inch margins.
- 3) Type or hand write your name in the upper right hand corner of each page.
- 4) Staple the pages together.
- 5) Do not paper clip or dog ear the pages.
- 6) Do not use a cover sheet or plastic binder.

PLAGIARISM NOTICE:

This course involves individual and group learning. Individual learning is governed by the university rules prohibiting plagiarism. You are required to individually author your case briefs, answers to questions on the readings, hypothetical case forms, and exams. Three acts of plagiarism are specifically prohibited and will result in a failing grade on the assignment in which they are discovered:

- 1) copying from another student's case brief, answers to questions on a reading, hypothetical case form, or exam and submitting it only as your own work;
- 2) collaborating with another student in writing a case brief, answering questions on a reading, completing a hypothetical case form, or taking an exam and submitting it only it as your own work; and
- 3) copying material from a book, article, court opinion, or Internet site without quoting and/or citing the source and, thereby, representing it as your own work.

If there is any doubt about what constitutes plagiarism it is your responsibility to clarify any questions with the me.

COURSE ASSESSMENT:

I have built this course around panel discussions of court cases and group discussions of readings and a hypothetical case. At the end of the semester, you will assist me in assessing their value for the next time I teach the course by completing the "Course Information Questionnaire" in Green, *Environmental Law and Policy*.

ADA DISABILITIES ACCOMODATIONS

Students with a documented Americans with Disabilities Act (ADA) disability are entitled to reasonable accommodations and services to support their academic success and safety. A request for services should be made at the start of the semester by contacting the Disability Services Coordinator in the Office of Academic and Career Services, 223 Allie Young Hall, 606-783-5188, www.moreheadstate.edu/acs. The Disability Services Coordinator will inform me about the accommodations to be provided. Students with a documented ADA disability should notify me at the beginning of the semester about any special assistance they may require during an emergency evacuation.

OFFICE HOURS:

You may discuss course-related matters during my office hours: 9:30-10:15; 11:30-12:00 MWF1. My office phone is 783-2128. If I am not in my office, you may leave a message on my voice mail, on my office door folder, with the secretary in 350 Rader (783-2655), or contact me at 859-233-7513 or w.green@morehead-st.edu.

