

# Environmental Law in the Oil and Gas Industry

Fall, 2014

Course #5297 - Section #25371

Lynn Alan Bortka

Tuesdays 4:00 – 6:00pm, Room

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## General Information

Course Description: This is not an advanced course. Having some educational or practical background in environmental or oil and gas matters is useful, but not required. Much more important is the desire to understand current environmental issues impacting, and caused by, the industry. This class will *not* review environmental laws in detail but will focus on many of the common law, regulatory, and statutory issues that are confronting oil companies, government regulators, non-governmental organizations, landowners, and private litigants (collectively the “stakeholders”). Class discussion will go beyond the written law and concentrate on the practical application and effect on the stakeholders. Strategies used for creation, compliance, and enforcement of environmental law will be reviewed. A main goal of this class is to improve your ability to be a valued and effective team member of your current or future environmental clients. Many of those clients are likely to be friends and family that have issues with one or more of the million oil and gas wells drilled in Texas.

Attendance: You must comply with the Law Center’s 80% attendance policy. I have no authority to make any exceptions to this policy. A sign-in sheet will be circulated each class. Make sure you sign in for each class. Missing class will impact what you are able to take away from this course and will likely affect your grade. If you have to miss a class, have someone audio record the class for you. Each class will run 10 minutes longer than the traditional ending time for a two hour class. This class will dismiss at 5:50 pm.

Class Participation: When called on and asked for an opinion on an issue, I expect you to respond. There is no right or wrong opinion...as long as it is honest and heartfelt. I plan to take advantage of the school’s policy to raise your grade (by one-third grade) for extraordinary participation. Of course, I also reserve the right to reduce your grade for (a) refusing to participate in class if and when called on

to express an opinion or (b) being disruptive in class. Attending class is part of class participation.

Grading: Your grade will be based on a two hour closed-book, closed-notes exam. It will primarily include short answer and essay questions. The exam will cover all material assigned and all matters discussed in class.

Textbook: There is no textbook assigned for this class. As background reading, I recommend Federal Environmental Law –The User’s Guide, by Olga Moya and Andrew Fono.

Assignments: There will be an assignment to complete and return to me before the first class. That “first day assignment” will be posted on the Law Center’s website as part of the course information. Other assignments will be given in class one week in advance. Most assignments will include the review of website material and the review of articles, videos, manuscripts, and other documents that I send to you electronically.

E-mail correspondence: Once you register for this class, I need your e-mail address immediately. The “first day assignment” should be sent to me at [lynnbortka@gmail.com](mailto:lynnbortka@gmail.com) as soon as possible after registering for this class. You will regularly receive e-mail correspondence from me regarding assignments and other matters.

### Syllabus

Following is a summary of some of the subjects to be covered in the course. This summary is not all inclusive. It will change.

August 25: Introduction to the course. Discuss how class material will be disseminated and the importance of email correspondence in this class. Review of the stakeholders involved in environmental issues.

September 2: Common Contamination issues in the Oil Field. Ownership of oil and gas rights and their influence on environmental complaints.

September 19: How clean is clean? Factors influencing common law claims v statutory claims. Negligence, trespass (underground?), and nuisance. Passive migration. Risk based corrective action.

September 16: Primary Jurisdiction Doctrine. Agency reluctance to engage. Diversity issues. Venue. Forum shopping. Company policies. Passive migration. Indemnification. Deposition preparation for clients. Joint defense groups. Offers of cleanup. Expert witnesses.

September 23: Administrative law. Agency involvement in environmental disputes and violations.

September 30: Administrative law, continued. Functioning and impact of trade organizations.

October 7: Waste: Review of EPA's "Green/Brown" Book for exploration and production waste. Explore waste creation, whether waste is hazardous, and why it matters. Analysis of the E&P exemption. RCRA's "trump" provision. Overlap with UIC-injectible fluids.

October 14: Waste (continued).

October 21: Hazardous Substances. CERCLA/Superfund. The National Priorities List. Joint defense issues. Refining and Chemical Plant impacts. Petroleum Exclusion. How clean is clean? Environmental justice.

October 28: Hazardous substances continued. Reporting obligations. Indemnity agreements.

November 4: Safe Drinking Water Act. Underground Injection Control Regulations. Proposed regulations on fracture treatments. Hazardous v. non-hazardous injection. Permits. Review of state permitting schemes. Interaction between the states and EPA.

November 11: SDWA continued

November 18: Clean Water Act. Waters of the United States = navigable waters?  
EPA versus Army Corps of Engineers.

November 25: Tentatively no class due to accumulated “extra” time (10 minutes per day) from previous classes. Class will be held if any other class is cancelled, postponed, etc.