

Environmental Law in the Oil and Gas Industry

Fall, 2015

Course 5215, Section 25745, 209 BLB

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Tuesdays 10am to Noon

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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 oil and gas business. This class will provide a survey of key environmental statutes and 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. Some of those clients are likely to be friends and family that have environmental issues with oil and gas wells drilled near their homes.

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 affect your grade.

Class Time: Each class will run till 11:40 but if we need to go over (e.g. interesting guest speaker), we may extend up to 11:50. I do not plan to miss any class but in the event I have to, I will endeavor to plan for substitutes rather than make-up classes. As a last option, I will schedule make-up classes per university schedule. We will end the semester on November 24. Final exam is scheduled 10-12 pm on December 15, 2015.

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 respectful of each other’s opinions even if you may differ. I plan to take advantage of the school’s policy to raise your grade (by half-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, (b) being disruptive in class, or (c) being disrespectful of your fellow students. Attending class is part of class participation. Also, while you may use laptops for taking notes, please refrain from surfing the web and using it for other purposes.

Grading: Your grade will be based on a two hour closed-book, closed-notes exam. This exam will include short answer and essay questions and will include some multiple-choice. The exam will cover all material assigned and all matters discussed in class. I will discuss the details of the exam more with you later in the semester. Last, as per Law Center Policy, I reserve the right to make adjustments to grades based on attendance and class participation. This adjustment can be upward or downward.

Textbook: There is no textbook assigned for this class. See below Assignment Section. As background reading, I am happy to recommend or loan you additional reading depending on your interest. Please ask me. For general background reading, J. Salzman and B. Thompson, *Environmental Law and Policy* (3rd ed. 2010) is available in the reference section of your library.

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. Registered students were also notified by me of the class assignment before class started. Other reading assignments will be given in class; normally 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 snehalr@gmail.com as soon as possible. Do NOT send email to my UH email account. You will regularly receive e-mail correspondence from me regarding assignments and other matters.

Syllabus

Following is a summary of most of the subjects to be covered in the course. This summary is not all inclusive. It will change based on politics, case law, and newsworthy events that arise during the course. The summary is in chronological order, but that order may also change based on class discussion, etc. Remember, I’ll be emailing reading material to you (or links to reading) on a regular basis. It’s critical that I have your email address.

The schedule, below, lists 14 class periods.

August 25: Introduction to the course. Discuss how class material will be disseminated and the importance of email correspondence in this class. What is Environmental law? How it intersects with oil and gas industry. Review of the various stakeholders involved in environmental issues.

September 1: Public and Private ownership of oil and gas rights and their influence on environmental complaints. Factors influencing common law claims: Negligence, trespass (underground?), and nuisance.

September 8: Administrative Law: Overview of Federal and State Environmental Control. Congress’ Commerce Power. Citizens standing to sue. Rulemaking. Agency oversight in environmental permitting; other stakeholders – trade associations.

September 15: Clean Air Act. National Ambient Air Quality Standards. Stationary sources and Area Sources. Permitting of air quality emissions.

September 22: CAA continued. Climate Change – statutory and common law claims. Mass v. EPA (regulating greenhouse gas emissions under Clean Air Act), UARG v. EPA decision, and upcoming federal and state regulations.

September 29: Oil and Gas and Climate Change continued; ocean acidification; other energy sources

October 6: Clean Water Act; Jurisdictional waters of the US. NPDES permitting. Impacts of oil and gas activity on wetlands.

October 13: Clean Water Act continued.

October 20: Enforcement Issues. Deepwater Horizon Enforcement Case Study

October 27: RCRA. Explore waste creation, whether waste is a solid waste/hazardous waste and why it matters. Exemption of oil and gas exploration and production waste from federal hazardous waste regulations. Analysis of the exploration and production exemption.

November 3: CERCLA/Superfund. The National Priorities List. Joint defense issues. Petroleum exclusion. Refining and chemical plant impacts. Petroleum exclusion. How clean is clean? Indemnity agreements.

November 10: Safe Drinking Water Act. Underground injection control regulations. Role of EPA as well as states and local governments in hydraulic fracturing. SDWA requirements for high development, remote areas for employees/contractors.

November 17: Endangered Species Act. Section 4 Listing process. Section 9 Take Prohibition. Section 7 consultation. Section 10 Incidental take authorization. Drilling activities on federal lands and Resource Management Plans. Wetland permits. Of particular interest to oil and gas industry: Dune Sagebrush Lizard – Permian basin precedent, Lesser Prairie Chicken, Greater Sage Grouse, and Mass Petition Settlements (Sept. 2011) and court-administered schedule through 2018 for USFWS listing decisions on approximately additional 700+ species.

November 24: Environmental Justice; claims under Civil Rights Act. Exam review.

December 15: Final Exam