

Syllabus – Environmental Law, Law 5390, Fall 2018, 3-credit hours

Professor Flatt

**M and W 10:30- noon (dismissal at 11:45 or 11:50 depending on topic and day),
BLB 3**

**NOTE SPECIAL ADDITIONAL REQUIRED ATTENDANCE AT LUNCHTIME
on Sept. 19**

Professor Victor Flatt, TUII 122, (713) 743-6437, vflatt@central.uh.edu
Office hours; Tuesdays and Thursdays 1:00 to 2:00 PM or by appointment (except Sept.
13, Oct. 11 and Oct. 15)

Course Prerequisites: None, but I encourage all of you to take Administrative Law at
some point

Honor Code:

*The Honor Code is in effect in this class and all others at the University. I am committed
to treating Honor Code violations seriously and encourage all students to become
familiar with its terms set out at [http://www.law.uh.edu/student/HONOR-CODE-AND-
PROCEDURES.pdf](http://www.law.uh.edu/student/HONOR-CODE-AND-PROCEDURES.pdf)?*

*If you have questions, it is your responsibility to ask me about the Code's application.
All exams, written work and other projects must be submitted with a statement that you
have complied with the requirements of the Honor Code in all aspects of the submitted
work.*

From the University: Counseling and Psychological Services (CAPS) can help students
who are having difficulties managing stress, adjusting to the demands of a professional
program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by
calling 713-743-5454 during and after business hours for routine appointments or if you
or someone you know is in crisis. No appointment is necessary for the "Let's Talk"
program, a drop-in consultation service at convenient locations and hours around
campus. http://www.uh.edu/caps/outreach/lets_talk.html

Textbook: Funk, Johnston, and Flatt, Legal Protection of the **Environment (4th Edition,
2018)- THIS IS A NEW EDITION**

West, Selected Environmental Statutes (2018-19 or earlier edition if after 2010);

This course provides an overview of the major environmental laws (particularly pollution
control laws) and accompanying regulations. "Environmental Law" is one of the largest
bodies of substantive law that now exists, and it is therefore impossible to teach the

whole thing comprehensively in one semester. For instance, we will not discuss mobile source controls under the Clean Air Act, mining reclamation laws, many natural resource laws, and will only briefly graze wetlands and the Endangered Species Act. The Natural Resources Law course will cover the resources side in depth. However, this course will teach you the major ways in which environmental statutes work and the various justifications for how statutes are passed and designed. It will also focus on how these laws are put into practice by agencies, specifically the Environmental Protection Agency, and the impact of executive branch actions on environmental law.

Since environmental law is not generally based on the common law, understanding environmental law depends on statutes, regulations, and the policies behind those statutes and regulations, and how that is interpreted by the courts. In practice, environmental issues are often resolved by convincing the administrative agency (the EPA or a state equivalent) of a certain interpretation of a law or a regulation, and the ability to make these arguments depends upon understanding the policies and reasons behind our environmental laws and regulations. We will therefore touch on some concepts of administrative law. Particularly in the last 20 years, more and more environmental disputes and policies have involved stretching the envelope of statutes to accommodate favored administration policies.

To fairly facilitate participation and since we have to monitor attendance in any event, ***I will have you all sign in the days that you are prepared. There will be about 24 class days where assignment preparation is required. You have 6 grace days in which you don't have to be prepared. Of those that do sign as prepared, people will be called on randomly (using playing cards). If you are prepared, you may put a check by your name on that day's roll. If you are present but not prepared, you may put an x. By ABA rules, you must attend 80% of the classes. If you have more than 6 unprepared days but less than 10, your raw score will be lowered by half a letter grade; if 10 or more, it will be lowered by a whole letter grade. Extreme lack of preparation and attendance may cause a failing grade. If you have problems with attendance or participating in the foregoing manner, please contact me outside of class. Illnesses and religious observances may be excused absences but you are responsible for the material.***

If Assignments are made for more than one day, THE ENTIRE READING SHOULD BE PREPARED FOR THE FIRST DAY to be prepared. IT IS UP TO YOU TO KEEP UP WITH THE DAYS you have signed in as prepared or not.

Laptops are permitted in class and in fact we will be using them frequently in in-class exercises, but they may be used only for note taking and access to the internet to look at relevant law and policy. I expect that you will not play games, use Instant Messenger, read e-mail, or access the Web during class (unless we are doing so as a class). Smartphones and other similar portable information access devices, including are not to be used and should be silenced. Because failure to follow these rules disrupts the class learning experience by distracting me and others, ***violations of this policy may result in a lowering of your grade.***

Your grade will be based on a final (WHICH WILL BE OPEN BOOK AND NOTE), but meaningful class participation may help your grade, while insufficient participation, preparation or attendance (or use of electronic distractions) will hurt your grade.

BY THE END OF THE TERM YOU SHOULD UNDERSTAND THE CONSTITUTIONAL AUTHORITY FOR (and limitations on) ENVIRONMENTAL LAWS, BE ABLE TO NAVIGATE THE MAJOR STATUTES AND IN WHAT FACTUAL SITUATIONS THEY MAY APPLY, UNDERSTAND THE EPA'S RULEMAKING PROCEDURES FOR THESE STATUTES, AND HOW A COURT WILL HEAR AND REVIEW AGENCY ACTION

PRELIMINARIES

Aug. 20– Introduction
A history of statutory environmental law, and the EPA

Assignment – 1-6; Pete Andrews, *The EPA at 40*, on posted on blackboard;

Aug. 22 How can environmental values be used in law? What are the best ways to implement environmental goals?

Assignment – Rose article (on blackboard); Flatt article (on blackboard)

Aug. 27 Sources of legal authority for legislating environmental law

Assignment - 39-52

Aug. 29 Constitutional Limitations on exercising Environmental Law; standing

Assignment – 52-65 (until *Lujan*); 74-97

Sept. 3 – LABOR DAY HOLIDAY

Sept. 5 - Standing continued: Administrative Nature of Environmental Law; barriers to review created by administrative law nature of environmental review; scope of judicial review

Assignment: Text: 98-110; [excerpt from CHEVRON on blackboard] This is a particularly short piece on administrative law...if you have not had or are not taking administrative law, please pay special attention to the standard of review argument

SUBSTANTIVE ENVIRONMENTAL LAW

Sept. 10

I. NEPA

Differences with pollution control laws

The NEPA process

Is an EIS Required (Major? Federal?)

Assignment – 111-144

Sept. 12

NEPA continued

Required – (significance?)

EIS Adequacy (discussion of environmental effects, alternatives, mitigation)

Assignment – 144-159; 167-179

Sept. 17

II. Clean Water Act

- Enforcement of Direct Controls/ NPDES program

- What is an “addition of pollution” to navigable waters?

Assignment: 185-187; 221-246

Sept. 19

– CWA continued

- federal/state relationship – enforcement programs

Assignment: 246-259

SEPT. 19 LUNCH

SPECIAL LUNCH TIME PRESENTATION (Noon to 12:50)

Debra Tsuchiyama Baker – Environmental Practice Since the 1980s

Co-sponsored by UHEELS and EENR Center – attendance mandatory for class (unless a conflict; please notify me ahead of time)

Sept. 24

-CWA – substantive NPDES standards (permit requirements)

Assignment: 260-281

Sept. 26

- CWA continued

- water quality concerns and non-point sources
- TMDLs
- 301 certification

Assignment: 281-291; 302-320

Oct. 1– CWA – jurisdiction and wetlands (what is deposit)

Assignment: 202-221; 832-842

Oct. 3 - wetlands continued; what is dredge and fill; wetlands procedure (handout)

Assignment: 842-856; 888-895

Oct. 8 The Clean Air Act

A. The problem and overview

Assignment – 321-342

Oct. 10

B. Criteria pollutants

C. Ambient stds.

Assignment: 342-369; statutory supplement, 42 U.S.C. Secs. 7408-09

OCT. 15 – NO CLASS – TIME ALREADY MADE UP

Oct. 17

D. State Implementation Plans (SIPS)

1. establishment of stds.
2. Issue and implication of varying state stds.
3. -effects of SIPS on other states

Assignment: 369-384; stat. supplement, 42 U.S.C. Sec.7410

Oct. 22

4. Non-attainment and ozone non-compliance

Assignment: 385-399; stat. supplement, 42 U.S.C. Secs. 7509-7511(a).

Oct. 24

- E. New Source Performance Stds. for stationary sources;
1. what is a “new source”

Assignment: 399-413; stat. supplement; 42 U.S.C. Sec. 7411

Oct. 29

2. New Source Review; baseline measurement and modifications
3. Substantive Requirements of Non-attainment,
4. PSD;

Assignment: 413-446;

Oct. 31

- F. The CLEAN AIR ACT and GHG regulation: (PSD) and existing sources

Assignment: 505-521;

Nov. 5

- G. Visibility Requirements
H. Hazardous Air Pollutants and the CAA

Assignment: 446-468;

Nov. 7

- I. Title V permitting and enforcement

Assignment: chapter 468-489

Nov. 12

- Hazardous Waste Overview/RCRA
- ID of Haz waste
- regulatory requirements

Assignment: 523-526; 554 (beginning with notes and comments)-574; also read RCRA table of contents in statutory supplement

Nov. 14

- CERCLA

- Overview
- Who is liable?

Assignment: 675-696; 701-707; 42 USC Sec. 9607;

Nov. 19

CERCLA

-scope of liability and defenses

Assignment: 707-725; Definition of contractual relation under definitions section 42 USC Sec. 9601

THANKSGIVING HOLIDAY – NO class on Nov. 22

Nov. 26

- Endangered Species Act
The reality of disappearing species
Listing
Critical habitat/ other listing issues

Assignment Chapter 759-786

REVIEW 1 hour TBD during reading days (attendance not mandatory)