

**Syllabus – Environmental Law, Law 5390, Fall 2020, 3-credit hours**

**Professor Flatt**

**M and W 10:30- noon (dismissal at 11:45 or 11:50 depending on topic and day),  
HyFlex class – if in person, TUII 240**

Professor Victor Flatt, TUII 122 (713) 743-6437, vflatt@central.uh.edu

**Office Hours**

- I will hold virtual office hours through Zoom each week on Tuesdays from 11-noon and from 2:30-3:30 PM on Thursdays, and I am happy to meet by phone or Zoom by appointment. We will use the same Zoom link as for our Environmental Law class.
- My office is located at TUII 122, but please do not come by unannounced during social distancing requirements. My e-mail address is vflatt@central.uh.edu. My office phone number is 713-743-6437.

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

Textbook: Funk, Johnston, and Flatt, Legal Protection of the **Environment (4<sup>th</sup> Edition, 2018)**

West, Selected Environmental Statutes (2020-21 or earlier edition if after 2012);

**IMPORTANT INFORMATION:**

**HyFlex class:**

**This class is defined as HyFlex by UH meaning that classes may be taught in the classroom or virtually by Zoom but always on schedule. TUII 240 has been reserved for this class. Though it is one of the largest normal classroom at the law school, TUII 240 can only accommodate 24 students at a time in a socially distanced manner. Depending on how many people always wish to come to class on Zoom, we may have to alternate in person students if we wanted to meet in person.**

**We will likely be using remote learning by Zoom, but I am also hoping to use in person learning in some circumstances, focusing on the various strengths of each. However, under no circumstances is anyone ever compelled to attend class in person. *You should feel free to attend remotely when class is non-remote if you feel it is necessary for your safety or comfort, or that of others.* This will likely evolve as the semester proceeds.**

**We will definitely be remote for the first two weeks. After that, I will let you know which modality will be used at which time. I will try to be clear and as predictable as possible. By UH order, all classes after Thanksgiving, and your final, will be remote.**

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>?*

*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.*

### **Diversity, Inclusion, and Wellness**

This is an inclusive learning space. At UHLC, we are committed to ensuring inclusive online and classroom learning spaces, where you'll be treated with respect and dignity, and where everyone is provided equitable opportunity to participate, to contribute, and to succeed.

In this course, all students are welcome regardless of socio-economic status, age, race, ethnicity, disability, religion, national origin, veteran's status, sex, sexual orientation, gender identity, gender expression, political affiliation, marital status and other diverse identities that we each bring to class. Our class is richer for this diversity.

Inclusive learning spaces facilitate the innovation and creative thought that enhance student success. This success arises from the participation, support, and understanding of you and your colleagues. I encourage you to speak up and to share your views, but also understand that you are doing so in a learning environment in which we're all expected to engage respectfully and with regard to the dignity of all others.

If you feel like your class performance is impacted in any way by your experiences inside or outside of class, please reach out to me. I want to be a resource for you. If you feel more comfortable speaking with someone besides me, Student Services is an excellent resource: 713-743-2182. Finally, I encourage you to bring any issues negatively impacting UHLC's openness to diversity and inclusion to the Diversity and Inclusion committee. The D&I committee's charge includes "[building] on the Law Center's strengths as a diverse and inclusive environment." You can contact the committee at [placeholder].

Your suggestions are encouraged and appreciated. Please let me know ways to improve the effectiveness of this course for you personally, or for other students or student groups.

### **Accessibility and Accommodations**

UHLC is committed to ensuring that all students enjoy equal access and full participation. If you anticipate or experience barriers based on a disability (including any chronic or temporary medical or mental health condition), please feel free to reach out to me so that we may discuss options. If you require any support services, you may contact Ms. Samantha Ary, Academic Records Coordinator. Ms. Ary is located in room 44A TU-II in the Office of Student Services suite, and she can be reached at [sary@central.uh.edu](mailto:sary@central.uh.edu) or 713-743-7466. Requests for accommodation that involve graded assignments **must be directed to Ms. Ary** and should be made as soon as possible to allow adequate time to document and to process the request.

If you observe religious or cultural holidays that will coincide with synchronous class sessions or conferences, please let me know as soon as possible, so that we may make arrangements.

### **Chosen Names and Preferred Pronouns**

I want to address each of you in a manner that corresponds to your identity. Although mistakes happen, chosen names and preferred pronouns—including non-binary ones such as they|them|their—and honorifics, such as Rev., Mr. Ms. Mx. Dr., will be respected in my classroom. Please feel free to reach out to me at any time if you want to make me aware of your chosen name or preferred pronoun or if you have concerns about how I or your classmates address you.

My pronouns are he/him/his. You may call me Professor Flatt.

### **COUNSELING: *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](http://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](http://www.uh.edu/caps/outreach/lets_talk.html)

### **DISCRIMINATION AND SEXUAL HARRASMENT/ Misconduct POLICY: *From the University:***

The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of

discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University system's Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here:

<http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>

[http://www.uhsystem.edu/compliance-ethics/\\_docs/sam/01/1d7.pdf](http://www.uhsystem.edu/compliance-ethics/_docs/sam/01/1d7.pdf) (antidiscrimination)

[http://www.uhsystem.edu/compliance-ethics/\\_docs/sam/01/1d8.pdf](http://www.uhsystem.edu/compliance-ethics/_docs/sam/01/1d8.pdf) (sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource.

### **COURSE DESCRIPTION and Information (IMPORTANT PLEASE READ)**

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 (offered next year) will cover the resources side in depth. However, this course will teach you the major environmental statutes. 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 whether that is consistent with the statute.

We will therefore discuss 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.

There will be 5 classes in which there will be in class work that you will keep a record of in a portfolio. Those classes are designated by an \*. This portfolio will form the basis of one of the alternative final grade options.

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 you 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 or absences 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 result in no credit.*

*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, 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), OR based on a revision and upgrading of 6 "in class" exercises. Days with in class exercises are denoted by an \* before the date. In class exercise work should be kept by you in an electronic portfolio**

Meaningful class participation may help your grade, while insufficient participation, preparation or attendance (or use of electronic distractions) can hurt your grade.

#### **LEARNING OBJECTIVE:**

By the end of the semester you should understand the Constitutional authority for (and limitations on) environmental law; be able to navigate the major statutes and know in which factual situations they may apply; understand the EPA's rulemaking procedures for these statutes, and how a court will hear and review and agency action.

#### **PRELIMINARIES**

\*Aug. 24– Introduction  
A history of statutory environmental law, and the EPA

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

Aug. 26 Constitutional authority for environmental laws; environmental goals, ways of implementation, and costs and benefits of these

Assignment – Book: 49-51; Rose article (on blackboard);

[follow up on NEPA exercise]

**Aug. 31 NO CLASS - ASYNCHRONOUS lecture pod substitute**

Administrative Nature of Environmental Law: Constitutional Limitations on exercising Environmental Law;

**Asynchronous portion –**

**a) administrative law Zoom lecture:**

<https://www.youtube.com/watch?v=V-nt25JNul4&feature=youtu.be>

**Assignment: Required reading: pp. 108-109 [excerpt from Chevron on Blackboard]**

**b) constitutional limitations Zoom lecture:**

<https://www.youtube.com/watch?v=eW6x4SNU3Eo&feature=youtu.be>

Suggested background reading – pp. 98-100, 108-109 [excerpt from CHEVRON on blackboard] 52-63

**ASSIGNMENT: Prepare 2 questions for class discussion on Sept. 2 related to administrative law pod or constitutional limitations pod. Please email these to professor by 5:00 PM Sept. 1 at [vflatt@central.uh.edu](mailto:vflatt@central.uh.edu)**

\*Sept. 2

Follow-up on asynchronous lectures; in class revisit of first day exercise

Sept. 7 – LABOR DAY HOLIDAY

Sept. 9 - Standing; barriers to review created by administrative law nature of environmental review; scope of judicial review

Assignment – 64-65 (until *Lujan*); 74-97; 101-108

## **SUBSTANTIVE ENVIRONMENTAL LAW**

Sept. 14

### **I. NEPA**

Differences with pollution control laws

The NEPA process

Is an EIS Required (Major? Federal?)

Assignment – 111-144

Sept. 16

NEPA continued

Required – (significance?)

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

Assignment – 144-159; 167-179

Sept. 21

### **II. Clean Water Act**

- Overview

- Enforcement of Direct Controls/ NPDES program

- What is discharge of a pollutant

Assignment: 185-187; Robert Adler, *Clean Water Act Case Study* (Flatt edit on blackboard); textbook – 221-232

Sept. 23

- What is a point source?

Assignment: *County of Maui v. Hawaii Wildlife Fund* (Flatt edit on Blackboard)

\*Sept. 28

– CWA continued

- federal/state relationship – enforcement programs

Assignment: 246-259

Sept. 30 -CWA – substantive NPDES standards (permit requirements)

Assignment: 260-281

Oct. 5 - CWA continued  
- water quality concerns and non-point sources  
-TMDLs  
-301 certification

Assignment: 281-291; 302-320

Oct. 7- CWA – jurisdiction and wetlands (what is deposit)

Assignment: 202-221; 832-842

Oct. 12- wetlands continued; what is dredge and fill; wetlands procedure (handout)

Assignment: 842-856; 888-895

Oct. 14

III. The Clean Air Act

A. The problem and overview

Assignment – 321-342

\*Oct. 19

B. Criteria pollutants

C. Ambient stds.

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

Oct. 21

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. 26

4. Non-attainment and ozone non-compliance

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

Oct. 28

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

Assignment: 399-418; stat. supplement; 42 U.S.C. Sec. 7411

Nov. 2

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

Assignment: 418-446;

\*Nov. 4

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

Assignment: 505-521;

Nov. 9

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

Assignment: 446-468;

Nov. 11

- I. Title V permitting and enforcement

Assignment: chapter 468-489

Nov.16

IV. Hazardous Wastes

- 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. 18

- CERCLA
  - Overview
  - Who is liable?

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

- \*Nov. 23 CERCLA
- scope of liability and defenses

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

THANKSGIVING HOLIDAY

Nov. 30

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

Assignment Chapter 759-786

Dec. 1

Endangered Species Act continued and Review