

Syllabus – Federal Clean Air Act

20th Century Law Struggling with 21st Century Problems 5297 Clean Air Act

University of Houston Law Center
Spring 2024 – M 4:00 – 6:00 pm
Adjunct Professor Steven Cook
Email: steven.cook@bracewell.com
Phone: 713.221.1366

Overview

With roots in principles of common law nuisance, the 1970, 1977, and 1990 federal Clean Air Act amendments established timelines for achieving various standards through a series of programs designed to address specific air quality concerns. These efforts were based, in part, on the scientific understandings of the day. During the semester, each class period will explore a particular program and the associated statutory provision and regulatory efforts to identify and control sources of air pollution that impact the selected air quality problem. Discussions will include both an analysis of the legal framework and the practical impact/effectiveness of the efforts, particularly given both the science and identification of causes and impacts of air pollution have moved beyond the understandings of the late 20th century.

Readings & Other Assignments

Each year critical decisions by the executive branch and judiciary significant alter the legal landscape of air regulatory programs. Consequently, an updated and useful casebook is not readily available. Instead, materials will be distributed electronically each week. Typically, each class will include the following readings:

- i) Information on the pollution problem including the underlying science and sources
- ii) Readings describing the control mechanism
- iii) Materials will include a mix of popular press articles, case excerpts and on some current topics, recently filed court briefs

In addition to the readings, for most weeks there will be a short worksheet that will be required to be completed and turned in. It should take approximately 10-15 minutes to complete. Since this practice area is dominated by regulations, it is important that the student gain some familiarity with the structure of the applicable CFR provisions and how to research regulatory and statutory questions. It will be assessed as a completion grade. It can be done alone or in a group. A sample is included at the end of the syllabus.

By the end of the course, you will be able to:

- Identify and describe key air pollution control regulatory schemes
- Develop advocacy strategies for air pollution claims
- Recognize technical and scientific issues

Grading, Class Participation & Attendance Policy

The class will be graded using a final exam. The “pass/fail” option is available for this class in accordance with current UHLC requirements. The standard attendance requirements apply. The class is designed to facilitate student participation and discussion – you will be challenged to come to a greater understanding of air pollution, its sources, and successes/difficulties (legal, technical, and practical) in achieving “clean air”. You will be expected to participate in discussions by providing your insights and perspectives into the issues and potential solutions. Grade adjustments of 1/3 (B+ to A-) based on class participation may be made in accordance with current UHLC policies. Remote presence will be made available on an exception basis but not routinely.

Professionalism

Continued enrollment in this course will be deemed to be a pledge by you under the Honor Code to comply with its standards. Each of us will be expected to be respectful of others in both language and conduct.

Class Topics

Below is a list of likely topics but the professor reserves the option to make adjustments based on current events and student interest:

- Science – what are the key science principles underlying the Clean Air Act? Is the science actually just a process?
- Acid Rain & Stratospheric Ozone – Did the emission trading market really work?
- Good Neighbor Programs for Ozone and Haze controls – What does Texas have to do with a monitor in southern Illinois?
- Climate Change – Stationary Sources: What is the “best system of emissions reduction” and must it be within the fence line?
- Climate Change – Mobile Sources: Can zero emission vehicles be included within the scope of the fuel efficiency requirements?
- Intersection of Environmental Justice, Civil Rights and the Clean Air Act: Who’s my neighbor and why does it matter?
- Why can’t EPA meet statutory deadlines and what happens when it doesn’t? Are judicial deadlines an effective substitute?
- Defeat Devices – Anatomy of conspiracy
- Enforcement – Can a long term (chronic) exposure be considered an “imminent and substantial endangerment” under section 303?
- National Ambient Air Quality Standards – When setting the goal, does it have to be achievable?
- National Ambient Air Quality Standards – Developing and Submitting the Plan: when states and EPA fight – who wins and loses?
- MACT – how does one evaluate risk and control technologies? Is it just math?
- Permits – two types (NSR and operating) required, but are they useful when there is an “upset”?
- Major Question Doctrine – isn’t every issue under the Clean Air Act “major”?

Mental Health and Wellness Resources

The University of Houston has several resources to support student's mental health and overall wellness. Some of those available include:

CoogsCare: <https://uh.edu/coogs-care/>

UH Go App: <https://www.uh.edu/go/>

UH Counseling and Psychological Services (CAPS): <https://www.uh.edu/caps/>

If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713.743.5454, or for the National Suicide and Crisis Lifeline, call or text 988 or go to <https://988lifeline.org/chat/>.

Title IX/Sexual Misconduct

Pursuant to the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. There are places on campus where you can make a report in confidence. More information on the available resources can be found here: <https://www.uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>

Reasonable Academic Adjustments/Auxiliary Aids

The University of Houston is committed to providing an academic environment and educational programs that are accessible to its students. Any student with a disability who is experiencing barriers to learning, assessment, or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website at <https://www.uh.edu/accessibility/> or by calling 713.743.5400 or by emailing jdcenter@Central.uh.edu

Recording of Classes Not Permitted

Students may not record all or part of class, livestream all or part of class, or make or distribute screen captures without the advanced written consent of the instructor. Students with authorized disability accommodations may record class activities for their personal use only.

Resources for Online Learning:

The University of Houston is committed to student success, and provides information to optimize the online learning experience through our Power-On website (<https://uh.edu/power->

on/learning/). Please visit this website for a comprehensive set of resources, tools, and tips including: obtaining access to the internet, AccessUH, Blackboard, and Canvas; using your smartphone as a webcam; and downloading Microsoft Office 365 at no cost. For questions or assistance contact UHOnline@uh.edu.

UH Email:

Please check and use your CougarNet email for communications related to this course. Faculty use the CougarNet email to respond to course-related inquiries such as grade queries or progress reports for reasons of FERPA. To access your CougarNet email, login to your Microsoft 365 account with your CougarNet credentials. Visit University Information Technology (UIT) for instructions on how to connect your CougarNet e-mail on a mobile device.

SAMPLE Homework Assignment – Acid Rain/Stratospheric Ozone Depletion

Short Answer Questions (include citations except for #1)

1) Acronyms

CFC _____

HCFC _____

ODP _____

SNAP _____

mmBTU _____

MW _____

2) What were the original Phase I allowances for Generator #12 at Michigan City, IN?

3) What is the ODP of CFC-115?

4) How many allowances are available for emissions avoided through qualified energy conservation measures and qualified renewable energy?

5) What are the four categories of “qualified renewable energy”?

6) Attach an article describing the science of acid rain formation or stratospheric ozone depletion.