

**POSC 347**

**Environmental Law and Policy**

Spring 2015

Tuesdays and Thursdays, 2:00 p.m.-3:20 p.m.

VKC 152

Website on Blackboard at <https://blackboard.usc.edu>

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More and more, environmental laws and policies and their consequences pervade our lives: the air we breathe, the water we drink, the food we eat, the land we live on, the plants and animals that share these resources. As the imprint of humans on the earth continues to grow, the import of these laws and policies can only increase. This course surveys the historical origins, the leading conflicts, and the evolving processes of this new and controversial field. Approached from a global perspective, environmental law offers a glimpse at some of the most far-reaching issues that confront the world today.

The study of environmental law, policy, and politics necessitates several different perspectives. As we shall see, the international character of problems like global warming and urban environmental degradation requires global analyses. At the same time, in domains like water resources, air quality and urban sprawl, the key to environmental performance is often found in the arrangements of local communities. Alongside multiple geographic scales, environmental policy and law combine various professional specialties. To master the field requires knowledge not just of legal institutions and how they work, but of natural science, engineering, economics, and politics.

In this course, we will combine readings of more traditional texts with legal materials, practical case analyses, in-class exercises, internet analyses, guest speakers and multimedia presentations. In the first weeks of the course, we will examine how environmental law and policy emerged over the course of the twentieth century, and the issues and debates at the core of environmental decision-making. In the following two weeks, we will turn to the institutional infrastructure of environmental law in the United States and worldwide. For most of the remainder of the course, successive sessions will take up leading domains of environmental law–water resources, water pollution, air pollution, global warming and ozone depletion, habitat and species conservation, urban sprawl, toxic wastes. Throughout the class, we consider the policy and ethical dilemmas that stand at the core of environmental law and policy, and the compatibility of environmental sustainability with industrial capitalism in an increasingly globalized world.

**Readings:**

The following required texts are available for purchase in the Bookstore:

Regina S. Axelrod, Stacy O. Vandeveer, and David L. Downie, *The Global Environment: Institutions, Law, and Policy*, Third Edition (Washington, D.C.: CQ Press, 2011).

Nancy K. Kubasek and Gary S. Silverman, *Environmental Law*, Eighth Edition (Upper Saddle River, N.J.: Prentice Hall, 2013).

Judith A. Layzer, *The Environmental Case: Translating Values into Policy,* Third Edition (Washington, DC: CQ Press, 2012).

David Schmidtz and Elizabeth Willott (eds.), *Environmental Ethics: What Really Matters, What Really Works*, Second Edition (New York: Oxford University Press, 2012).

Kathryn Hochstetler and Margaret Keck, *Greening Brazil* (Durham, NC: Duke University Press, 2007).

All required readings marked \* will be made available in a folder on the Content page of the Blackboard website. *Make sure that you download and read these online readings, as they will be essential to the course.* Other readings will be available online and are hyperlinked from the Word version of this syllabus, which can also be downloaded from Blackboard. Additional articles, reports, web links, etc. will be distributed over the course of the semester.

**Course Requirements**

You will be required to do all assigned reading, attend class regularly and contribute actively to our discussions.

In addition to class, you will be required to participate through contributions to a discussion board at the Blackboard website for this course (<https://blackboard.usc.edu>). Every student will be required to submit at least *three shorter* *postings* of at least 150 words each (one page), and *two longer postings* of 2-4 pages (300-600 words). Shorter postings should contain an argument, a well-articulated point, or a series of questions addressed to the readings, or an assessment or account of web materials on closely related topics.

Long postings are designed to give you a chance to analyze some aspect of one of the many cases we will discuss in greater depth, and set the stage for our class discussion. Examples of possible long posting themes include:

--Analyze and either defend or critique one of the opinions in a court case we will read.

--Critically assess one or more of the policy or ethical arguments in the readings (e.g., the case Kelman makes against cost-benefit analysis, or the defense of the Pak Mun dam by the World Bank)

--Critically assess the environmental policy outcome in one of the policy case studies.

--Analyze the politics of the outcome in one of the policy case studies (e.g., What explains the result? What interests, power relations or choices were at work?)

--Critically assess the choices made by one of the stakeholders in a policy case study (e.g., What U.S. strategies might have worked better in the Copenhagen climate negotiations, and why?)

--Any of the questions posed by Layzer text at the conclusion of the case chapters in her book.

You are encouraged to speak with the instructor about your ideas for postings, and to approach these assignments creatively. Consider how your longer postings can be used to develop independent research on related topics, or to explore ideas for a term paper.

All postings are due *by 5 p.m. on the day preceeding the relevant class session*. When agreed by the instructor, participation in some of our in-class role-playing exercises and debates may be substituted for the shorter postings. Multiple postings in the same week will generally be counted as part of a single posting.

In addition to a mid-term and a final exam or paper, you will be expected to complete two other written assignments. The first, due February 13, will be a written exercise of 6-8 pages that is designed to initiate you into the vast world of materials now available online for the study of environmental law, policy and politics, and to give you a chance to reflect on the underlying philosophy of environmental law. Details on this assignment will be handed out in class on January 13 and placed on Blackboard in the Assignments folder.

In the last half of the course, you will have the option of a take-home final examination or, with the instructor’s permission, a term paper of around 13-15 pages. A handout to be distributed following the midterm will explain the term paper requirements further.

Final grades will be based on the following weights:

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| --- | --- |
| First assignment: | 15% |
| Mid-term: | 20% |
| Short discussion board postings: | 15% (5% each) |
| Long discussion board postings (mini-papers): | 20% (10% each) |
| Final exam or paper: | 30% |

This list of assignments is based on the assumption that all students will do all the required reading, attend all classes and participate regularly and constructively in discussions. Failure to do any of these tasks will be considered just cause for lowering of your final grade.

USC seeks to maintain an optimal leaning environment. General principles of academic honesty include the concept of respect for the intellectual property of others, the expectation that individual work will be submitted unless otherwise allowed by the instructor, and the obligations both to protect one’s own academic work from misuse by others as well as to avoid using another’s work as one’s own. All students are expected to understand and abide by these principles. Scampus, the Student Guidebook, contains the Student Conduct Code in Section 11.00, while the recommended sanctions are located in Appendix A: <http://web-app.usc.edu/scampus/university-governance>

Students will be referred to the Office of Student Judicial Affairs and Community Standards for further review, should there be any suspicion of academic dishonesty. The Review process can be found at: <http://usc.edu/student-affairs/SJACS/>.

**Semester Plan**

(subject to change, any alterations to be announced in advance)

**January 13: Introduction**

**January 15, 20: First principles and history**

Peter Singer, “All Animals are Equal,” in David Schmidtz and Elizabether Willott, *Environmental Ethics: What Really Matters, What Really Works* (New York: Oxford University Press, 2012), pp. 49-58.

Mark Sagoff, “Animal Liberation and Environmental Ethics: Bad Marriage, Quick Divorce,” in Schmidtz and Willott, pp. 59-65.

Aldo Leopold, “The Land Ethic,” in Schmidtz and Willott, pp. 124-129.

Holmes Rolston III, “Values in and Duties to the Natural World,” in Schmidtz and Willmott, pp. 66-70.

\*Garrett Hardin, “The Tragedy of the Commons,” online at <http://www.sciencemag.org/cgi/content/full/162/3859/1243>.

Elizabeth Willott, “Restoring Nature, Without Mosquitos?”, in Schmidtz and Willott, pp. 244-258.

\*Steffen, W., Crutzen, P. J., & McNeill, J. R. (2007). The Anthropocene: Are Humans Now Overwhelming the Great Forces of Nature? *AMBIO: A Journal of the Human Environment*, 36(8), 614-621.

**January 22, 27: Dilemmas of contemporary environmentalism**

***Developed-world versus developing-world environmentalism:***

Arne Naess, “The Shallow and the Deep, Long-Range Ecology Movement,” in Schmidtz and Willott, pp. 129-132.

Ramachandra Guha, “Radical American Environmentalism and Wilderness Preservation: A Third World Critique,” in Schmidtz and Willott, pp. 145-152.

Holmes Rolston III, “Feeding People Versus Saving Nature,” in Schmidtz and Willott, pp. 504-516.

\*David Bloom, “International public opinion on the environment,” *Science* 269 (5222): 354-358 (1995).

***Environmental justice and ecofeminism:***

Kristin Schrader-Frechette, “Environmental Justice: Creating Equality, Reclaiming Democracy”, in Schmidtz and Willott, pp. 204-216.

Henry Shue, “Global Environment and International Inequality,” in Schmitdz and Willott, pp. 516-525.

V. Rukmini Rao, “Women Farmers of India’s Deccan Plateau: Ecofeminists Challenge World Elites,” in Schmidtz and Willott, pp. 194-201.

**Recommended optional readings:**

Elizabeth Willott, “Recent Population Trends,” in Schimdtz and Willott, pp. 526-532.

Peter Singer, “Famine, Affluence and Morality,” in Schmidtz and Willott, pp. 486-492.

Kathryn Hochstetler and Margaret Keck, *Greening Brazil* (Durham, N.C.: Duke University Press, 2007), pp. 63-139 (On the Brazilian environmental movement).

Deccan Development Society website: <http://www.ddsindia.com/www/default.asp>

**January 29, February 3: The context of U.S. environmental law**

Nancy K. Kubasek and Gary S. Silverman, *Environmental Law* (Upper Saddle River, N.J.: Prentice Hall, 2011), pp. 1-46, 379-420 (7th edition, pp. 1-47, 389-427).

\*Robert Kagan, “How Much Do National Styles of Law Matter?,” in Robert Kagan and Lee Axelrad (eds.), *Regulatory Encounters: Multinational Corporations and American Adversarial Legalism* (Berkeley, CA: University of California Press, 2000), pp. 1-30.

**Recommended optional reading:**

Kubasek and Silverman, pp. 117-150 (7th edition pp. 118-151).

Jacqueline Peel, “Environmental Protection in the Twenty-First Century: Sustainable Development and International Law,” in Norman J. Vig, David Leonard Downie and Regina Axelrod (eds.), *The Global Environment: Institutions, Law and Policy* , Third edition (Washington, DC: Congressional Quarterly Press, 2011), pp. 48-66.

Kathryn Hochstetler and Margaret Keck, *Greening Brazil* (Durham, N.C.: Duke University Press, 2007), pp. 23-62 (On the Brazilian regulatory system).

**February 5, 10 Administration and litigation in environmental law**

Kubasek and Silverman, pp. 47-112 (7th edition, pp. 48-113).

***Court case:***

*Sierra Club v. Morton*, 405 U.S. 727 (1972) (Opinions at <http://www.law.cornell.edu/supct/> or at <http://supreme.justia.com>, oral argument and other resources at <http://www.oyez.com>).

Film: “Erin Brokovich” (to be seen outside of class)

***Recommended optional reading:***

Christopher D. Stone, “Should Trees Have Standing? Toward Legal Rights for Natural Objects,” in Schmidtz and Willott, pp. 85-89.

Gary Varner, “Biocentric Individualism”, in Schmidtz and Willott, pp. 90-100.

**February 12. 17: Water as a resource**

Video in class: “Mullholland’s Dream”

\*Norris Hundley, Jr., *The Great Thirst* (Berkeley: University of California Press, 1992), pp. 406-422.

Mono Lake Committee website: <http://www.monolake.org/mlc/>

***Court case:***

\**National Audubon Society v. Superior Court,*  33 Cal.3d 419 (1983).

***Case studies of dams and water resources in the developing world:***

\*Report of the World Commission on Dams, November 2000 (Executive Summary).

\*Jamil Anderlini, “China: A blast from the past,” *Financial Times* (December 14, 2009)

\*“The Tragedy of Pak Moon Dam (Thailand),” *Bangkok Post* (October 1, 2000).

\*Hirsch, P. (2010). The Changing Political Dynamics of Dam Building on the Mekong. *Water Alternatives, 3*(2), 312-323.

***Optional recommended reading:***

\*World Commission on Dams, “Pak Moon Dam” (2000) (case study on Pak Moon Dam, with comments by the World Bank and the national power company of Thailand (EGAT))

**February 13: FIRST ASSIGNMENT DUE**

**February 19, 24: Water quality**

Kubasek and Silverman, pp. 196-237, 357-366 (7th edition pp. 198-240, 363-381).

*Rapanos v. United States,* 547 U.S. 715 (Opinions at <http://www.law.cornell.edu/supct/> or at <http://supreme.justia.com>, oral argument and other resources at <http://www.oyez.com>).

Environmental Protection Agency, “Guidance to Identify Waters Protected by the Clean Water Act” (2011), online at:

<http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters_guidesum.cfm>

***Case study of urban stormwater runoff in Los Angeles:***

\*Roy, A., Wenger, S., Fletcher, T., Walsh, C., Ladson, A., Shuster, W., . . . Brown, R. (2008). Impediments and Solutions to Sustainable, Watershed-Scale Urban Stormwater Management: Lessons from Australia and the United States. *Environmental Management, 42*(2), 344-359.

\*packet of materials on urban stormwater regulation in the Los Angeles region

Heal the Bay online Beach Report Cards for the U.S. West Coast, at <http://brc.healthebay.org/>

***Case study of urban sanitation and water quality in the developing world:***

World Health Organization, *Water for Life: Making it Happen* (Geneva 2005) (available online at <http://www.who.int/water_sanitation_health/monitoring/jmp2005/en/index.html>)

\*Amrita G. Daniere, & Lois M. Takahashi. (1999). Environmental Behavior in Bangkok, Thailand: A Portrait of Attitudes, Values, and Behavior. *Economic Development and Cultural Change, 47*(3), 525-557.

**February 26, March 3: Air Quality**

Kubasek and Silverman, pp. 153-191, 394-395 (7th edition, pp. 168-216, 441-443).

***Market-based mechanisms:***

Layzer, pp. 414-441.

***Case study of Los Angeles:***

\*Daniel A Mazmanian, “Achieving Air Quality: The Los Angeles Experience”, Bedrosian Center Working Paper, online at (http://www.usc.edu/schools/sppd/bedrosian/private/docs/mazmanianairquality.pdf)

South Coast Air Quality Management District website:

http://www.aqmd.gov/aqmd/index.html

***Case study of São Paulo:***

Hochstetler and Keck, pp. 186-222.

**March 6: MIDTERM (in class)**

**March 10, 12: Toxics, Hazardous Waste and Risk**

Kubasek and Silverman, pp. 240-304 (7th edition pp. 241-309).

Steven Kelman, “Cost-Benefit Analysis: An Ethical Critique,” in Schmidtz and Willott, pp. 350-357.

David Schmidtz, “A Place for Cost-Benefit Analysis,” in Schmidtz and Willott, pp. 387-398.

\*Nancy Myers, “The Rise of the Precautionary Principle: A Social Movement Gathers Strength,” Multinational Monitor (September 2004), online at <http://multinationalmonitor.org/mm2004/09012004/september04corp1.html>

\*Cass Sunstein, “The Precautionary Principle as a Basis for Decision-making,” *The Economist’s Voice* 2(2) (2005), online at <http://www.degruyter.com/view/j/ev.2005.2.2/ev.2005.2.2.1079/ev.2005.2.2.1079.xml?format=INT>

\*Patrick Radden Keefe, “Reversal of Fortune” *The New Yorker* (January 9, 2012), online at <http://www.newyorker.com/reporting/2012/01/09/120109fa_fact_keefe?currentPage=all>.

***Case study of Love Canal***:

Layzer, pp. 56-78.

***Case study of the Bhopal disaster:***

Video in class: “Bhopal: The Second Tragedy”

\**Bano v. Union Carbide Corp.* 984 F.2d 582 (2d Cir.1993).

\*Derek Brown, “The Dead Zone,” *The Guardian*, (September 21, 2002) Weekend pages, p. 44.

\*Mac Sheoin, T. (2009). Waiting for Another Bhopal: Global Policies to Control Toxic Chemical Incidents. *Global Social Policy, 9*(3), 408-433.

**March 17-19: NO CLASS (Happy spring break!)**

**March 24, 26, 31, April 2, 7, 9, 14, 16: Global warming and CFC reduction**

***The science and its politics:***

Al Gore, “An Inconvenient Truth” (portions to be shown in class)

John R. Christy, Testimony, U.S. House Ways and Means Committee, in Schmidtz and Willott, pp. 567-569.

Intergovernmental Panel on Climate Change, Fourth Assessment: Read “Summary for Policymakers” document from Panels I, at <http://www.ipcc.ch/>

***International policy:***

Michele M. Betsill, “International Climate Change Policy: Toward the Multilevel Governance of Global Warming, in Axelrod, Van Deveer and Downie, pp. 111-128.

Stephen M. Gardiner, “A Perfect Moral Storm: Climate Change, Intergenerational Ethics and the Problem of Corruption,” in Schmidtz and Willott, pp. 547-554.

***U.S. policy and politics:***

Layzer, pp. 270-301.

Kubasek and Silberman, pp. 348-404 (7th edition pp. 448-454) (for background on U.S. energy policy, pp. 31-344 (7th edition pp. 339-383)).

Massachusetts v. EPA, 549 U.S. 497 (2007) (Opinions at <http://www.law.cornell.edu/supct/> or at <http://supreme.justia.com>, oral argument and other resources at <http://www.oyez.com>).

***Case study: in-class simulation of international climate change negotiations:*** Intergovernmental Panel on Climate Change, Fourth Assessment: Read “Summary for Policymakers” documents from Panels II and III, at <http://www.ipcc.ch/> (See especially report of Panel II on regional impacts)

*Background:* Chapters 10 (United States), 11 (European Union), and 13 (China), in Axelrod, Van Deveer and Downie, pp. 192-209, 213-235, 259-282.

**April 21, 23: Forest, wetland and species conservation**

Kubasek and Silverman, pp. 349-373 (7th edition pp. 354-383).

***Case study of the Everglades:***

\*Judith Layzer, “Ecosystem-based Solutions: Restoring the Florida Everglades,” in *The Environmental Case: Translating Values Into Policy* (Washington, DC: CQ Press, 2002), pp. 289-318.

Comprehensive Everglades Restoration Plan website, [www.evergladesplan.org](http://www.evergladesplan.org)

\*Don Van Natta Jr. and Damien Cave, “Deal to Save Everglades May Help Sugar Firm,” *New York Times* (March 7, 2010).

***Case study of the Amazon:***

Hochstetler and Keck, pp. 140-185.

Website on Amazon deforestation, <http://www.mongabay.com/brazil.html>.

**April 28, 30: Sprawl and Urban Land**

Layzer, pp. 383-408 (on the U.S. property rights movement), 488-511 (on planning in Portland, Oregon).

\*Keith Pezzoli, *Human Settlements and Planning for Ecological Sustainability: The Case of Mexico City* (Cambridge, MA: MIT Press, 1998), pp. 90-104.

***Court case:***

*Dolan v. City of Tigard*, 114 S.Ct. 2309 (1994) (Opinions at <http://www.law.cornell.edu/supct/> or at <http://supreme.justia.com>, oral argument and other resources at <http://www.oyez.com>).

**Optional Recommended Reading:**

Southern California Studies Center, *Sprawl Hits the Wall* (Los Angeles: SCSC, 2001)(downloadable off the Web at <http://www.brookings.edu/reports/2001/03california.aspx>).

**FINAL PAPER: Wednesday, May 7, 5 p.m. on Blackboard website**

**FINAL TAKE-HOME EXAMINATION: Wednesday, May 7, 5 p.m. on Blackboard website**