

FLORIDA STATE UNIVERSITY COLLEGE OF LAW

Law 6470 – Environmental Law
Spring 2019

SYLLABUS

Mondays & Wednesdays, 11:00 a.m. – 12:22 p.m.
Room A221 (Advocacy Center)
Professor Shi-Ling Hsu

Phone: 644-0726

Office: Room A227C Advocacy Ctr.

Email: shsu@law.fsu.edu

Office hours: M 2-4 pm

This is a survey course in Environmental Law. The goal of this course is to provide you with an introduction to some of the most important federal and state environmental statutes. In doing so, we will always bear in mind the underlying goals of environmental law, and also the advantages and disadvantages of different approaches to environmental law and regulation.

The required text for this course will be Glicksman, Markell, et al, **ENVIRONMENTAL PROTECTION: LAW AND POLICY** (Aspen, 7th ed., 2015). There is also a packet of supplemental readings that is available for purchase, but all supplemental readings are posted on the course Canvas site. You are also responsible for having access to regulations and statutes. I use WEST'S SELECTED ENVIRONMENTAL LAW STATUTES, 2018-2019 in covering the statutory and regulatory provisions; you may buy cheaply a relatively recent version (past 6-7 years) of the book, which will be almost unchanged for our purposes. The statutory provisions are easily available electronically as well, but you should be prepared to have a hard copy (i.e., print them out) for class and exam-taking purposes.

There will be three special, off-schedule class meetings for this course. Attendance is **required** for these special meetings, and will substitute for three class meetings that will be canceled (to be announced). If you have a conflict, please let me know in advance and I will substitute a written assignment. Failure to attend or make up your absence counts as a class absence.

Wednesday, February 6, 3:30 am to 4:30 pm (Room 310): You are required to attend this Spring's Distinguished Lecture, by Richard Revesz, the Lawrence King Professor of Law and Dean Emeritus at the New York University School of Law.

Saturday, February 9, 8:30 am to 12:30 pm (meet at Cascades Park): "Saving Wakulla Springs Tour" by North Florida water expert Jim Stevenson. This will be a seven-stop caravan tour of the Wakulla Springs watershed, beginning at Cascades Park and ending at Wakulla Springs State Park. Please register for the tour with [Palmetto Expeditions](#). The cost will be \$10, a special rate for FSU students.

Wednesday, March 6, 12:30 pm to 1:30 pm (Room 310): In lieu of regular class meeting on that day, you are to attend a guest lecture by Professor Bruce Huber, the Robert and Marion Short Scholar at the University of Notre Dame Law School.

Please make sure you sign the attendance sheet to verify your attendance. As you already know, if you miss more than five classes, College of Law policies prevent you from receiving credit for the course. It would behoove you to expect the unexpected, and to save those absences for real emergencies, like medical problems or family crises, and not just a head start on a long weekend.

Online students

Lectures will be recorded and available to you electronically. At some point during the lecture, I will write up on the classroom dry-erase board, or post on a power point slide, a question based on the class lecture, which will be the "online attendance question." You should write down a response to the question and email it to me. **In order to receive credit for "attendance" online, you must watch lectures from a given week and email the answers to the "online attendance questions" to me by 11:59 pm the Sunday of the week following those lectures.** For example, for the classes taught on Monday, January 7 and Wednesday, January 9, you must have finished watching the lectures and answered the lecture questions for those classes by 11:59 PM on Sunday, January 13. If you fail to email responses to me by the appointed time, you will not receive attendance credit for those classes. If you fail to timely watch more than five lectures or if you fail to timely answer more than five lecture questions, you will not receive credit for the course.

Grading

Your grade for this class will be based on your **final examination**, which will take place on **Tuesday, April 23, at 8:30 a.m.** It will be a three-and-a-half hour exam. You will be responsible for all of the course material covered in the course. I may award one or two extra credit points to students that I feel have made extraordinarily helpful contributions to class discussion. That would include online students that I feel offered exceptional answers to online attendance questions.

Online students may take the final exam remotely (at the scheduled exam time) or in person at the law school at the scheduled exam time. Online students who take the exam remotely will have to register and pay a fee of approximately \$30 directly to the online exam proctor. Students who are allotted extra accommodation time must pay an extra \$7 per additional hour. The exam instructions and questions will be delivered electronically through ExamSoft to students taking the exam remotely online. An online proctor will electronically monitor these students by viewing these students through their computer camera as the students take the exam. **You must also email me by March 25 to let me know you will be taking the final exam remotely.**

Academic Honor Policy

Students are subject to the honor policy of the FSU College of Law, and of FSU. The FSU Academic Honor Policy outlines the University's expectations for the integrity of students' academic work, the procedures for resolving alleged violations of those expectations, and the rights and responsibilities of students and faculty members throughout the process. Students are responsible for reading the Academic Honor Policy: <http://fda.fsu.edu/content/download/21140/136629/file/AHPFinal2014.pdf>.

Americans With Disabilities Act

Students with disabilities requiring academic accommodation should: (1) register with and provide documentation to the Student Disability Resource Center; and (2) contact the law school's Office of Student Affairs to schedule a meeting to review and discuss the specific accommodations for which you have been approved. This should be done during the first week of class. This syllabus and other class materials will be made available in alternative format upon request. For more information about services available to FSU students with disabilities, contact the Student Disability Resource Center, 874 Traditions Way, Florida State University, Tallahassee, FL 32306-4167, voice: 850-644-9566, TDD: 850-644-8504, email: sdrc@admin.fsu.edu, <http://www.disabilitycenter.fsu.edu>.

Course outline

The following is an outline of the topics I plan to cover in this course (subject to change), along with assigned readings. Page numbers refer to pages in the text, while (supp) refers to the course supplement. Statutory provisions bear the citation "U.S.C." while regulatory provisions bear the citation "C.F.R." Do not assume that each item in the outline corresponds to one reading assignment for one class. That will usually be the case, but not always.

- I. Foundations of Environmental Law
 - A. Why We Pollute; an Introduction to Environmental Law 5-13, *skim* 68-78, 78-84.
 - B. Common Law Nuisance 1074-1077, Rest 2d Torts (supp), 30-32, 55-62.
 - C. Statutory Law and Federalism 1263-1271, 87-104 (stopping at note 3).
- II. National Environmental Policy Act
 - A. Introduction 261-262, 271 (starting with Notes & Qs) -277, 295-311, two-page handout on Categorical Exclusions (supp).
 - B. Segmentation and Tiering 40 C.F.R. § 1508.28, 311-322, Deepwater Horizon (supp)
 - C. Cumulative Impacts & Adequacy 40 C.F.R. §§ 1508.7, 1508.25, 324-334.
- III. Clean Air Act
 - A. Introduction 419-431, 436-442, 443-446.
 - B. NAAQS 42 U.S.C. §§ 7408(a)(1), 7409(b)(1), 450-458 (stopping at note 2), 466-469, 482-490.
 - C. Emissions Standards 491-499, 512-515.
- IV. Climate Change 1172-1190, 1193-1198, MA v. EPA, Kivalina (supp).
- V. Water
 - A. Introduction 601-607, 610-613, 614-619, 33 U.S.C. §§ 1342(a)(1)&(2), (b)(1)&(2), 1344(a)&(f), 1362(6)(7)(12)(14)&(19) 619-635; CWA 2018 Proposed Rule (supp).
 - B. Jurisdiction 644-651, 655-661, 667 (start with Notes & Qs)-669,
 - C. Technology standards 33 U.S.C. §§ 1311(a), 1311(b)(1)(A)&(C), 1311(b)(2)(A)&(C)&(E), 1311(n), 1316(a), 1316(b)(1). 672-697, 33 U.S.C. §§ 1313(d)(1), 1313(i). 705-720, 33 U.S.C. §§ 1344(a) & (e) & (f). FL Water Resources Act (supp).
 - D. TMDLs
 - E. Nonpoint pollution; wetlands
 - F. Florida Laws
- VI. Toxic Substances Control Act 816-835.
- VII. Resource Conservation & Recovery Act 873-893, 895-900, 42 U.S.C. §§ 6903(5), 6903(27), 40 C.F.R. §§ 262.11, 262.20, 262.23.
- VIII. CERCLA
 - A. Intro 913-926, 42 U.S.C. §§ 9607(a) & (b).
 - B. Response Costs; Strict Liability 930-945, 42 U.S.C. §§ 9601(22), 9601(35), 9604(a).
 - C. Potentially Responsible Parties 945-959.
 - D. Contribution Actions 968-978, 42 U.S.C. §§ 9613(f).