

ENVIRONMENTAL LAW (LAW 548)

Professor McCubbin
Spring 2022

SYLLABUS

Class Time:

Tuesdays and Thursdays 1:30 to 2:45 PM
Room 251

Office Hours:

Tuesdays and Thursdays 3 to 4 PM (Zoom) and other times by appointment

COVID-Specific Information:

When we meet in class, you must wear a mask that covers your nose and mouth. If you do not have a mask, I will provide you with one.

If we have to hold class remotely, I will distribute a Zoom link for you to use. On Zoom:

- Keep your microphone muted unless you are speaking.
- Use the chat function sparingly (for example, to indicate your audio or video is not working).
- Keep your video on unless (a) you need to briefly turn it off for some reason; (b) you receive permission from me to keep it turned off generally; or (c) you have an accommodation through DSS to turn it off.
- Dress appropriately, as if you were attending an in-person class.
- If you use a virtual background, make sure it is professional.

Required Statute Book: You must have a statutory supplement, such as the one published by West Academic titled *Selected Environmental Law Statutes*. You can use any version issued for 2010 or later. All other readings will be provided online.

Grading: There is no final exam in this course. Your grade will be based on:

1. a client letter, worth 20% of your grade, due on Friday, February 4 (the end of week 4); and
2. a lengthy motion to dismiss, worth 80% of your grade, due on Friday, April 22 (the last day of classes).

The details will be posted separately on TWEN. We will spend several class sessions discussing these exercises, and I will also meet individually with each one of you about them.

Course Outline: We will discuss the following broad topics and sub-topics (subject to change):

1. the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) – liability for ownership of contaminated land and defenses to liability;
2. the Clean Water Act – the section 402 permitting program, the section 404 permitting program, and “waters of the United States”;
3. the Endangered Species Act – listing and delisting of species and the section 7 federal consultation process; and
4. the Clean Air Act – permitting, citizen suits, and regulation of greenhouse gases.

Ungraded Tasks: We will likely do one or more ungraded written exercises that must be satisfactorily completed to receive credit for the course. These exercises will be designed to improve your writing (especially as to technically complex federal regulations) and to hone your analysis of environmental law concepts.

Student Learning Objectives: At the end of this course, each student should be able to:

- analyze and apply environmental statutes adopted by Congress;
- locate, analyze and apply environmental regulations adopted by the U.S. Environmental Protection Agency (EPA);
- understand the interplay between federal and state environmental schemes; and
- critically analyze environmental policies.

Beyond those substantive objectives, there are also several learning objectives related to how I run the class. For example, I usually do not use PowerPoints; instead, I present and summarize each day's lessons orally. The objective is for students to learn to take good notes from oral presentations. That activity mimics how attorneys in practice have to listen and take notes as they interview clients, take depositions, participate in negotiations and so on.

Likewise, I call on many different students each day because, as another learning objective, students need to develop the skills to communicate their analysis and arguments extemporaneously ("on the fly"). As part of that, students need to learn to control any nervousness about being called on. Again, this mimics the practice of law since attorneys must regularly respond to questions from a judge, a client, an opposing counsel or others.

In addition, occasionally I will ask you to talk with one or two other students about the day's lessons, and periodically you may review each other's written work (with my guidance). The learning objectives are for students to develop the ability to work in teams and to give and receive feedback orally and in writing.

Students are also expected to do writing tasks throughout the semester, with the obvious learning objective of continuing to improve their writing skills.

Students are also expected to arrive in class on time, with an equally obvious objective of students learning to be punctual.

Finally, another objective is for students to learn to comply with detailed, lengthy instructions – which you will see in the assignments and out in the practice of law when, for example, you file a brief in a court or submit an application with an

administrative agency.

Assignments: For each week of classes, I post the assignments on TWEN by Friday of the prior week and often earlier than that. The assignments for the first four weeks are posted on TWEN in the “Weekly Assignments” forum.

Tardiness: You should make every effort to arrive on time to class. Doing so is courteous and professional. However, I recognize that sometimes life just gets in the way, so if you end up being a bit late, come into class quietly, and see me afterwards to explain what happened.

Class Attendance: Attendance will be taken daily. You are allowed to sign the attendance sheet only if you did the assigned work and are prepared to discuss it. If you are in class but you did not do the assigned work, you will be marked as absent.

Pursuant to School of Law Rule III.5(f), you are permitted six (6) absences. For any absence after that, you will be subject to Law School Rule III.5(g), which calls for a grade reduction or other penalties.

Noting Out of Class: If you would like to attend a class session without being called on, you may note out, as follows:

1. do not sign the attendance sheet; and
2. leave me a note on the lectern before class begins with your name and the date.

A day of “noting out” counts as one of your absences.

Workload Expectations: ABA Standard 310 expects that your work for this course outside the classroom will equate to twice as much time as we actually spend in the classroom. Your work outside the classroom includes preparing for class, synthesizing your notes from class each week, working on ungraded and graded tasks, and meeting with me individually. Please keep that expectation for out-of-class work in mind as we proceed through the semester.

Days of No Class: Occasionally we may not meet if I have a scheduling conflict. We will make up for any missed sessions with out-of-class exercises that will comply with ABA Standard 310, which specifies the amount of time students must

spend on coursework both inside and outside the classroom to earn the three credit hours available in this course.

Recording Policy: All sessions of this course will be recorded and available to you for review. You are prohibited from recording the class yourself in any manner, and doing so is a violation of the Honor Code.

Expectations for Proper Behavior:

- When you apply to take the bar, the bar examiners ask faculty about the honesty and integrity of our students, so you should strive for proper behavior in the classroom and beyond.
- Occasionally in this course we may discuss difficult policy or legal issues about which reasonable people can have differing views. You should give respect to each other's opinions, listen with an open mind, and think critically about your own point of view and that of others.
- Your behavior in the classroom or on Zoom, including the use of your laptop or other electronic devices, should not be distracting to me or other students.
- All SIUC students should engage in safe behaviors to avoid the spread of COVID-19.

If, in my judgment, you do not meet these expectations, I can take various steps to remedy the situation, including having a private conversation with you, putting you in a particular seat in the classroom, banning you from using an electronic device, or withdrawing you from the course altogether.