Environmental Studies 351
Spring Semester 2004
Instructor: Mark Schachner, Esq.
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Class Meets: Wednesday Evenings, 6:30 p.m. to 9:30 p.m. at Bolton 103
Office Hours: By Appointment Before and After Class

Course Description and Objectives: This course will entail study, discussion and
writing about environmental legal issues at the Federal, State and Local levels. Topics
covered will include laws governing air and water pollution, hazardous waste disposal
and governmental zoning powers. After initial focus on the “birth” and evolution of
environmental regulatory schemes, principally at the Federal level, emphasis will shift to
analysis of environmental legal issues of regional and local significance. Class
assignments will include analysis of environmental law statutes, regulations and cases,
as well as other writings, including current articles, regarding local environmental issues.
Students will also learn to find, research and analyze Court Decisions involving
environmental law. Discussion group format will enable students to develop advocacy
skills in debates among each other and group assignments may include the opportunity
to participate in community or regional legal issues of environmental social relevance.

Readings:

Required Text: We will use one text as our primary source for initial discussion
and analysis of environmental regulation issues.

Firestone, David and Frank Reed. 1993, Environmental Law for Non-

This book is available for purchase at the Skidmore Bookstore.

Additional reading materials will consist of articles, statutes, regulations, legal
memoranda and cases which are assigned and/or available to the class prior to
their discussion. Cases to be reviewed and discussed will also include recent
Court Decisions issued on the various course topics.

Assignments:

Weekly Current Events Summary and Presentation: Two students each week
will be responsible for presenting to the Class a description and summary of
whatever environmental legal issues have appeared as current events in the
week since our last class. One student will discuss international and/or national
current environmental legal issues and the other student will discuss current
State and/or local environmental legal issues. The current events information is most easily gleaned from newspaper articles, but can be augmented by magazine reports or any other media source. When your turn falls in a given week, you will need to pay close attention to any and all environmental legal issues that are mentioned in the newspaper during that week, as you will need to present them in a thoughtful and intelligent manner. In other words, mere recitation of the occurrence of the event will not suffice. You should actually make a brief presentation about them and explain them so that we can all understand the issues. Each student should present their current events issues for at least five but no more than ten minutes.

**Case Presentations:** You will need to be prepared to “present” any of the Court cases that are part of our assigned readings. We will discuss “case presentation” in more detail but, generally speaking, you will be asked to describe the facts, circumstances, legal issues, parties’ positions, outcomes and rationale of the case. This will require close reading and thoughtful analysis of the Court decisions.

**Short Policy Response Papers:** Two short (3 pages) Policy Response Papers will be submitted at weeks #7 and #11. Each paper will briefly summarize one of the environmental policies studied in the previous weeks and discuss its benefits and detriments. All papers must be typewritten and must be double spaced. Please put your name on a separate last page only to facilitate “blind grading”.

**“Mid-Term” Exam:** A “Mid-Term” (actually more like 2/3 term) Exam will be administered on March 31st. The Exam will cover the topics discussed in class thus far. The Exam will be taken during regular class time and will be “open book”.

**Group Advocacy Debates:** The students will also conduct “debates” on several of the class discussion topics. The debates will take the form of small groups of advocacy teams presenting the two or more sides of a particular issue to another small group of “judges”, who in turn will be responsible not only for listening and deliberating, but also for questioning and scrutinizing the presentations and issuing "decisions" on the issues presented.

**Term Paper:** Each student will prepare a research paper (10 page minimum) devoted to a particular environmental legal issue of some controversy. The issue may be of national, regional or local significance. The issue shall be set forth in the form of a question and shall be followed by detailed analysis of the “pros” and “cons” or various sides of the issue and shall then reach a conclusion stating the position that the student advocates. You will be required to submit a written description of your term paper topic by no later than March 31st. The topic cannot be one we analyze in detail in class. Each term paper must involve at least one Court case and must utilize research from at least four independent written sources (in addition to and not counting internet/web research). All papers must be typewritten and must be double spaced. Please put your name on a separate last page only to facilitate “blind grading”.
**Term Paper Presentation:** Our final class session will be devoted to student presentations of their term papers. Each presentation should involve introduction of the topic/issue, discussion of opposing views, critical analysis and the conclusion/position the student advocates.

**Grading:** The learning objectives of this course will be assessed through the two Policy Response Papers, the “Mid-Term” exam, the detailed research/advocacy Term Paper and performance in the various individual and group verbal participation components. The final grade will be determined as follows:

- Policy Response Papers       10% (5% each)
- “Mid-Term” Exam            30%
- Term Paper Presentation     10%
- Term Paper                  30%
- Overall Class Participation (consisting of Current Events Presentation, Case Presentation, Participation in Group Advocacy Debates and General Class Discussion) 20% (5% each component)

Regardless of his/her scores along the way, each student must successfully complete each graded component of the course. In other words, you can not “opt out” or fail to submit one of the Policy Response Papers, for example, or any other component.

**Standard of Integrity:** One of the important goals of this class is to encourage and enable students to critically evaluate environmental legal issues and express their opinions about them. All are free to share whatever opinions they may have and all views and opinions shall be treated and received with the utmost respect for our fellow colleagues. Ethical integrity is an underlying theme of many of the topics of this course and strict adherence to the Skidmore College Honor Code is required at all times.

**Attendance Policy:** This class will meet 13 times for the semester. Therefore, attendance at all class sessions is vital and mandatory. Each unexcused absence will result in a 10% reduction in the Class Participation component of the final grade. More than two such absences will result in a failing grade.

**Paper Submission Policy:** All papers must be submitted when due. Late submission will result in 20% per day grade reduction.

**WEEK 1**

1) **Jan. 26th**

   Course Introduction - Discussion of Background Issues – Review Syllabus
   Introduction to Environmental Law/The “Birth of Environmentalism”

   Reading: Firestone pp. 1 – 17
2) **Feb. 4** th Basic Legal System and How to Find the Law - Class will include instruction on legal research (including "Lexis-Nexis") from Barbara Norelli at Skidmore Library.

Reading: Firestone pp. 17 – 28

3) **Feb. 11** th Traditional “Common Law” Approaches to Environmental Regulation – Public and Private Nuisance, Trespass and Other Remedies

Reading: Firestone pp. 65 – 72
Article: The Common Law: How it Protects the Environment
(http://www.perc.org/publications/policyseries/commonlaw_full.php?s=2)

Incorporation of Environmental Issues Into Governmental Decision-Making - National Environmental Policy Act (NEPA) and New York State Environmental Quality Review Act (SEQRA)

Reading: Firestone pp. 29 – 53

4) **Feb. 18** th NEPA and SEQRA (continued)

Readings: Book Chapter: Environmental Law - New York State Environmental Quality Review Act (SEQRA) (hand-out)
Article: Great Future in Plastics? The Judicial Repeal of Standing for Environmental Organizations in SEQRA Cases (hand-out)

Public Access and Recreational Uses

Firestone pp. 126-130

5) **Feb. 25** th Public Access and Recreation Uses (continued)

Article: Water-Based Planning Control and Enforcement in New York State: What Are the Options? (hand-out)

6) **March 3** rd Public Access and Recreation Uses (completed)
Readings: Morgan v. King, 35 NY 454 (1866)
Adirondack League Club v. Sierra Club, 92 NY2d 591 (1998)

Adirondack Park: Creation, Agency and Issues
Guest Lecturer: Richard Hoffman, Esq.

Readings: Article: A Political History of the Adirondack Park and Forest Preserve (hand-out)
Citizen’s Guide to APA Land Use Regulations (www.apa.state.ny.us) (also hand-out)
APA Act – NYS Executive Law, Article 27
Association for the Protection of the Adirondacks v. Mac Donald, 253 NY 234, 170 NE 902 (1930)
Horizon Adirondack Corporation v. State of New York, 88 Misc 2d 619, 388 NYS 2d 235 (Court of Claims 1976)
Wambat Realty Corp. v. State of New York, 41 NY 2d 490, 393 NYS 2d 949 (1977)

7) Mar. 10th Local Government Control – Land Use, Planning and Zoning

Reading: Select Chapters of “All You Ever Wanted to Know About Zoning” (hand-out)

Big Box Development Group Advocacy Exercise
First Policy Response Paper Due

March 17th SPRING BREAK - NO CLASS

8) Mar. 24th The Hudson River PCB Dredging Project
Guest Lecturer: David Higby, Environmental Advocates
Readings: CEASE Comments (hand-out)
EPA’s Record of Decision (hand-out)
Private Rights to Enforce Environmental Laws through Citizen’s Suits.
Connecticut Coastal Fisherman v. Remington Arms, 989 F2d 1305 (2d Cir 1992)
Atlantic States Legal Foundation v. Karg Brothers, 841 FSupp 51 (NDNY 1993)

9) Mar. 31st “MID-TERM” EXAM
Term Paper Topic Due
10) Apr. 7th  CERCLA/Superfund

Readings:  Portion of Book Chapter 11: CERCLA – Regulation of Toxic Substance and Hazardous Wastes (hand-out)


General Electric v. Environmental Protection Agency, 360 F.3d 188 (D.C. Cir. 2004)

Superfund Allocation Group Advocacy Exercise

11) Apr. 14th  Regulation and Protection of Endangered Species

The Wilton Wildlife Preserve
Guest Lecturer: Sarah Clarkin, Director of Wilton Wildlife Preserve and Park

Readings:  Articles:

“Invasion of the Trout-Snatchers” (hand-out)

Court Decisions:  Legal Action for Animals v. Adirondack Park Agency Decision (hand-out)

Save the Pine Bush v. Planning board of City of Albany, 130 AD 2d 1 (3d Dept. 1987)

Save the Pine Bush v. Common Counsel of the City of Albany, 188 AD 2d 2d 969 (3d Dept. 1992)

Save the Pine Bush v. Planning Board of the Town of Guilderland, 217 AD 2d 767 (3d Dept. 1995)

Wyoming Farm Bureau Federation v. Babbitt, 987 F.Supp 1349 (D. Wyo. 1997) [NOTE: read entire case but focus only on Discussion Section III Re: Endangered Species Act – need not focus on discussions of standing, notice and NEPA]

Second Policy Response Paper Due

12) Apr. 21st  Siting of Telecommunications Tower Facilities

Readings:  Section 704 of the Telecommunications Act of 1996 - 47 USC §332(c)(7)

Cellular Telephone Co. v. Rosenberg, 82 NY2d 364 (1993)

Sprint Spectrum, LP v. Willoth, 176 F.3d 630 (2d Cir. 1999)

Vertical Broadcasting, Inc. v. Town of
Southampton, 84 F Supp 2d 379 (E.D.N.Y. 2000)
New York SMSA Ltd. Partnership v. Town of
Riverhead Town Board, 118 F Supp 2d 333
(E.D.N.Y. 2000)
Site Tech Group, Ltd. v. Board of Zoning
Appeals of the Town of Brookhaven, 140
FSupp 2d 255 (E.D.N.Y. 2001)

Model Telecommunications Facilities Ordinance (hand-out)

Cell Tower Application Group Advocacy Exercise

13) Apr. 28th Student Presentations of Term Papers

May 5th Term Papers Due