

**DEPARTMENT OF LEGAL STUDIES AND BUSINESS ETHICS
THE WHARTON SCHOOL, UNIVERSITY OF PENNSYLVANIA**

**LGST 215/815
ENVIRONMENTAL MANAGEMENT, LAW AND POLICY**

**PROFESSOR SARAH E. LIGHT
SPRING 2015**

I. INSTRUCTOR

Professor Sarah E. Light
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Office: 647 Huntsman Hall
Office Hours: Tuesdays 1:30-2:45pm and by appointment

II. CLASS MEETING TIMES AND LOCATION

Mondays and Wednesdays 10:30am-12pm
Location: JMHH F65

III. COURSE OBJECTIVES

The law and public policy shape how business managers must think about their firms' interactions with the environment. The primary goal of this course is to learn to think critically about:

- (1) the relationship between business and the natural environment,
- (2) the existing legal and policy framework of environmental protection and its effects on what business managers are charged to do, and
- (3) the potential to effect change in that legal and policy environment.

The first part of the course will introduce you to concepts of sustainability, and will provide a grounding in the foundational concepts of environmental law. As we address different topics in environmental law and policy, we will examine a series of case studies in which law, policy and business intersect. Examples include how the law of municipal and hazardous waste management informs business practices about e-waste; how informational regulation affects business strategy; and how the dominance of state rather than federal rules governing hydraulic fracturing affects both business decisions and the economic and environmental implications of that practice. We will also examine the emerging concepts of private environmental governance, in which private contracting, third-party certification, and insurance can impose environmental obligations and create incentives in the absence of government action. We will then focus on different approaches of incorporating

sustainability into business practices, including through lifecycle analysis and environmental management systems. The final part of the course will consist of student group presentations on current topics in environmental management, law and policy.

Students are not expected to have any previous experience with environmental law or policy.

IV. TEXT AND READINGS

The assigned texts for this course are:

- James Salzman and Barton H. Thompson, Jr., *Environmental Law and Policy* (4th ed., Foundation Press 2013) (“S&T”).
- Coursepack (available from Wharton Reprographics through Study.net).

V. ASSIGNMENTS AND GRADING

Students will be required to participate in class, prepare two individual papers and a final group project. There is no final exam in this course.

The final grade for the course will be determined as follows:

- Class participation: 20%, which is based on:
 - Participation in class discussions and in-class exercise(s); and
 - 5 discussion questions (1 each for 5 classes) based on the readings, which you must submit to me by 5pm the day before class
- Individual Paper # 1: 20% due February 10th by 5:00pm
- Individual Paper # 2: 30% due March 18th by 10:30am
- Final Group Project: 30%

Class Participation: Students are expected to be punctual, attend each class, prepare for classes conscientiously, and contribute to the class discussion. This means providing thoughtful commentary, engaging in analysis, and/or posing relevant questions. It also means being prepared to discuss the readings, including legal cases and other materials.

General Guidelines for Written Assignments. I have intentionally given you plenty of time to complete each assignment, so all written assignments must be handed in on time. If a paper is late for any unexcused reason, it is penalized one grade level for each 24-hour period or portion thereof it is late (*i.e.*, A would become A-; an A- would become B+ etc.). Excused reasons would include death in the family, serious illness or family emergency, with advance notification if possible.

Please note: *All papers must be submitted via Canvas in .word (not .pdf) format.*

Individual Paper #1: Due on Tuesday, February 10th by 5:00pm. Individual Paper # 1 will be on an assigned topic. The paper must be no more than 1,500 words. **I have set the deadline prior to class so that I can review your papers before class, and we can discuss your responses in class on February 11th.** If you miss the deadline, but still turn your paper in before the start of

class, the standard 24-hour penalty policy will apply. However, failure to submit Individual Paper #1 by the start of class on February 11th, when we will discuss student responses to the assignment, will result in no credit on that assignment.

Individual Paper #2: Due Wednesday, March 18th, at or before the start of class. Individual Paper # 2 will be on a topic of your choice. The paper must be no more than 2,000 words. Your paper should discuss a relevant topic in environmental policy, law or management related to material assigned in the course. Topics must be approved in advance by the Professor.

Final Group Project: Each student must participate in a group project. Students should begin to consider a topic that they would like to investigate relatively early in the semester. The topic must be approved by the Professor in advance. Past projects have addressed a wide variety of topics such as: Marine Stewardship Council certification, Genetically Modified Foods and Climate Change, Deep-Sea Mining, the Sustainable Design of Seattle's Bullitt Center, among others. At the end of the semester, each group will present its research to the rest of the class. Depending upon class size, the Professor will inform students about the size of each group, and all students share responsibility and the grade for the presentation. Grades for the group projects will be based on the quality of the final presentation itself, as well as any supplementary written or other submissions provided indicating sources and research.

Citations, Collaboration and Plagiarism. Papers must represent only the student's own creative work and effort. **I take plagiarism and cheating very seriously and will deal with such actions according to University policy.** Students may use computer-assisted spelling or grammar programs and may discuss general ideas of paper topics with others. But no writing coaches, relatives, or other personal assistance may be relied upon for the actual writing. The work must be your own.

As with any paper, you must use a consistent citation method for sources. Any source you quote or rely on must be either footnoted, with source and page references, or noted parenthetically, for example (Sax 1980 at p. 7) with the full citation provided in a bibliography (*e.g.*, Joseph L. Sax, *Mountains without Handrails: Reflections on the National Parks* (University of Michigan Press 1980)). Please make reference to *all* sources used. No statement that relies on a source should fail to reference the source.

With respect to grading, I will give credit to well-organized, well-written, and well-reasoned papers. The paper should deal with material critically and thoughtfully. What works best for each individual varies, but many students find the following methods to be useful: stating a thesis and defending it against the best counter-arguments, writing an outline and then following it, or writing and organizing notes on index cards or otherwise before starting to compose. An unerring rule of good writing is to rewrite. Be self-critical in assessing your own writing and be sure to give yourself enough time to revise and edit. Deadlines will be strictly enforced with penalties assessed for lateness (except for emergencies). Emergencies include death in the family or other serious situations (approved, if possible, in advance).

VI. CLASSROOM EXPECTATIONS

- We will start and end class on time.
- You must display your name tent.
- You must turn off all phones, laptops and other electronic devices.
- No food during class.
- Drinks in reusable containers are permitted.

VIII. COURSE OUTLINE

Please note: These assignments are subject to revision as the course progresses, depending upon changes in the law and our progress.

Class 1: Wednesday, January 14

Introduction to Sustainability, Environmental Management, Law and Policy

Readings for Today:

- Wal-Mart's Sustainability Strategy, 2007 [Coursepack #1]
- Wal-Mart's Sustainability Strategy, 2010 Update [Coursepack #2]
- I will hand out readings for the SHARC exercise

No Class Monday January 19 – University Holiday for Martin Luther King, Jr.'s Birthday

Class 2: Wednesday, January 21

A Classic Paradigm from Economics: The Tragedy of the Commons

Readings for Today:

- Garrett Hardin, *The Tragedy of the Commons*, 162 Science 1243 (1968) [Coursepack #3]
- Elinor Ostrom, *Governing the Commons* (1990), Chapter 1 [Coursepack #4]
- Prepare for SHARC in-class exercise (I will hand out readings in Class #1)

Class 3: Monday January 26

Introduction to the U.S. Legal System and Anatomy of a Lawsuit

Readings for Today:

- *Edmunds v. Duff*, 280 Pa. 355 (Apr. 28, 1924) [Coursepack #5]
- S&T, Chapters 1 & 2

Class 4: Wednesday, January 28

The Common Law Roots of Environmental Law: Public and Private Nuisance Introduction to the U.S. Legal System and Anatomy of a Lawsuit, cont'd.

Readings for Today:

- *Madison v. Ducktown Sulphur, Copper and Iron Co.* (Tenn. 1904) [Coursepack #6]
- *Missouri v. Illinois* (S. Ct. 1906) [Coursepack #7]
- *Georgia v. Tennessee Copper Co.* (S. Ct. 1907) [Coursepack #8]

Class 5: Monday, February 2

Does the Common Law Still Matter? Common law in the Climate Change Context

Readings for Today:

- *Kivalina v. ExxonMobil* (9th Circuit) [Coursepack #9]
- Report of the Intergovernmental Panel on Climate Change, Summary for Policymakers, Working Group 1 to the Fifth Assessment Report (AR5), *available at* http://www.climatechange2013.org/images/uploads/WGI_AR5_SPM_brochure.pdf.

Class 6: Wednesday, February 4

The Rise of Modern Federal Environmental Law and the Regulatory State Regulatory Options, and the Regulatory Process

Readings for Today:

- S&T, Chapter 3, pp. 44-75
- *Chevron v. Natural Resources Defense Council* (S. Ct. 1984) [Coursepack #10]
- *Optional Reading:* Sarah E. Light and Eric Orts (working paper)
- ***I will hand out the Assignment for Individual Paper #1.***

Class 7: Monday, February 9

Pollution Prevention and Hazardous Waste Management: Superfund and RCRA

Readings for Today:

- S&T, Chapter 8
- *Allied-Signal: Managing the Hazardous Waste Liability Risk* [Coursepack #11]
- *Dividing and Conquering the Trash*, NY Times Oct. 25, 2014, available at: (<http://www.nytimes.com/2014/10/26/business/dividing-and-conquering-the-trash.html>)

Individual Paper # 1 is due on Tuesday, February 10th by 5:00pm via Canvas.

Class 8: Wednesday, February 11

Complete discussion of RCRA and Superfund Current Issues in Waste Management: E-Waste

Readings for Today:

- Readings listed in the writing assignment

Class 9: Monday, February 16

Clean Air: Common Law, the Clean Air Act, and Climate Change

Readings for Today:

- S&T, Chapters 4 & 5
- *Massachusetts v. EPA* (S. Ct. 2007) [Coursepack #12]

Class 10: Wednesday, February 18

Clean Air and Climate Change after *Massachusetts v. EPA*

Readings for Today: (Note: this is a rapidly evolving area of the law; final readings to be announced)

- Excerpts from *Utility Air Regulatory Group v. EPA & EME Homer* (to be posted to Canvas)
- Clean Power Plan (Proposed) (to be posted to Canvas)
- S&T, Chapter 5

- ***Due today: 2-paragraph summary of proposed topic for Individual Paper #2***
- ***Sign-up in class for Group Presentation dates starting today (3 week open sign up period)***

Class 11: Monday, February 23
Environmental Markets and Entitlements

Readings for Today:

- Ronald Coase, *The Problem of Social Cost* (1960) [Coursepack # 13]
- Sarah E. Light, *The New Insider Trading: Markets within the Firm*, 34 Stan. Envtl. L.J. (forthcoming 2015) (to be posted to Canvas)
- *See generally* Regional Greenhouse Gas Initiative, <http://www.rggi.org/>

Class 12: Wednesday, February 25
Mandatory Information Disclosure as a Regulatory Tool: The National Environmental Policy Act (NEPA) and the Toxics Release Inventory (TRI)

Readings for Today:

- S&T, Chapter 12
- Excerpt of Sarah E. Light, *NEPA's Footprint*, 87 Tul. L. Rev. 511 (2013) [Coursepack # 14]
- Bradley Karkkainen, *Information as Environmental Regulation: TRI and Performance Benchmarking: Precursor to a New Paradigm?* 89 Geo. L.J. 257 (2001) [Coursepack # 15]

Class 13: Monday, March 2
Public and Private Informational Governance in the Climate Context

Readings for Today:

- US Securities and Exchange Commission Guidance Regarding Disclosure Related to Climate Change (Feb. 2, 2010), *available at*: <http://www.sec.gov/rules/interp/2010/33-9106.pdf>
- Mark Cohen & Michael Vandenberg, *The Potential Role of Carbon Labeling in a Green Economy* [Coursepack # 16]
- CDP S&P 500 Climate Change Report 2014, *available at*: <https://www.cdp.net/CDPResults/CDP-SP500-leaders-report-2014.pdf> (Read executive summary; skim the rest).
- *Optional*: Michael W. Toffel and Jodi L. Short, *Coming Clean and Cleaning Up: Does Voluntary Self-Reporting Indicate Effective Self-Policing*. *Journal of Law & Economics* 54, no. 3 (August 2011): 609–649 [Coursepack #17]

Class 14: Wednesday, March 4

Energy Policy: Hydraulic Fracturing and Environmental Federalism

Readings for Today:

- S&T, Chapter 11
- David Spence, *Federalism, Regulatory Lags, and the Political Economy of Energy Production*, 161 U. Pa. L. Rev. 431 (2013) [Coursepack #18]
- Amanda Leiter, *Fracking, Federalism, and Private Governance*, Harv. Envtl. L. Rev. (forthcoming 2015) [available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2407102]
- U.S. Energy Information Administration, Annual Energy Outlook 2014
<http://www.eia.gov/forecasts/aco/> (only the Executive Summary is required; full report optional)

Wharton Spring Break – No Class on March 9, March 11

Class 15: Monday, March 16

Risk Regulation in the Face of Uncertainty: Toxic Chemicals, the Precautionary Principle and International Compliance

- S&T, Chapter 7, pp. 175-197 (Toxic Substances).
- Noah Sachs, *Jumping the Pond: Transnational Law and the Future of Chemical Regulation*, 62 Vand. L. Rev. 1817 (2009) [Coursepack #19]
- ***Due at start of next class: Individual Paper #2.***

Class 16: Wednesday, March 18

Land Use and Zoning as a Form of Environmental Control

Readings for Today:

- *Village of Euclid v. Ambler Realty Co.* (S. Ct. 1926) [Coursepack # 20]
- *Robinson Township v. Commonwealth of Penn.* (Pa. 2013) [Coursepack #21]
 - Read Pt. I, Skim Pt. III
- ***Due today: Individual Paper #2.***

Class 17: Monday, March 23
Land Use, Takings and Sea Level Rise

Readings for Today:

- *Penn Central Transp. Co. v. New York*, 438 U.S. 104 (1978) [Coursepack # 22]
- *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992) [Coursepack # 23]
- *Optional reading:* Christopher Serkin, *Passive Takings: State Inaction and the Duty to Protect Property*, 113 Mich. L. Rev. (forthcoming 2014-15) [*available at:* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2419482]

Class 18: Wednesday, March 25
Insurance, Climate Change Adaptation, and Resilience

Readings for Today:

- Howard C. Kunreuther & Erwann O. Michel-Kerjan, *Climate Change, Insurance of Large-Scale Disasters, and the Emerging Liability Challenge*, 155 U. PA. L. REV. 1795 (2007) [Coursepack # 24]
- *Optional:* <http://www.businessweek.com/articles/2013-08-22/femas-new-flood-maps-pressure-homeowners-to-raise-their-houses>

Class 19: Monday, March 30
Clean Water: From Pollution Prevention to Sustainability

Readings for Today:

- S&T, Chapter 6
- *Rapanos v. United States* (S. Ct. 2006) [Coursepack #25]
- Coca-Cola Water Stewardship, Sustainability Report, *available at:* <http://www.coca-colacompany.com/sustainabilityreport/world/water-stewardship.html#section-replenishing-the-water-we-use>

Class 20: Wednesday, April 1
Product Stewardship: Bottled Water

Readings for today:

- FIJI Water and Corporate Social Responsibility: Green Makeover or Greenwashing? [Coursepack #26]
- FTC Green Guides, available at <http://www.ftc.gov/os/2012/10/greenguides.pdf>
- I will provide instructions in class for the group exercise on bottled water.

Class 21: Monday, April 6
Environmental Protection and the Corporate Responsibility Debate

Readings for today:

- Milton Friedman, *The Social Responsibility of Firms is to Increase Profits* [Coursepack #27]
- Michael Porter & Claas Van der Linde, *Green & Competitive: Ending the Stalemate*, Harvard Business Review, 73/5 (Sept./Oct. 1995): 122-133 [Coursepack #28]

Class 22: Wednesday, April 8
Environmental Management Systems/Strategic Environmental Management

Readings for today:

- To be announced

Class 23: Monday, April 13
Lifecycle Analysis and Assessment: Promises and Limitations
Guest Speaker: Gary Survis, Senior IGEL Fellow & Lecturer in MES

Readings for today:

- *Life Cycle Management: How Business Uses it to Decrease Footprint, Create Opportunities and Make Value Chains More Sustainable*, available at: <http://www.unep.fr/shared/publications/pdf/DTIx1208xPA-LifeCycleApproach-Howbusinessusesit.pdf>
- *Cradle-to-Cradle Design at Herman Miller: Moving toward Environmental Sustainability* [Coursepack #29]
- Michael Braungart et al., *Cradle-to-cradle design: creating healthy emissions e a strategy for eco-effective product and system design*, Journal of Cleaner Production (2006), doi:10.1016/j.jclepro.2006.08.003 [Coursepack #30]

Class 24: Wednesday, April 15
Student Project Presentations

Class 25: Monday, April 20
Student Project Presentations

Class 26: Wednesday, April 22
Student Project Presentations

Class 27: Monday, April 27
Student Project Presentations

Class 28: Wednesday, April 29
Final Class: Wrap Up

IX. INSTRUCTOR BIO

Sarah E. Light is an Assistant Professor of Legal Studies and Business Ethics at the Wharton School of Business at the University of Pennsylvania, where she teaches Environmental Management, Law and Policy. Light earned her A.B. in Social Studies from Harvard College, where she graduated *magna cum laude*, Phi Beta Kappa, and was awarded the John Harvard Scholarship and Elizabeth Cary Agassiz Scholarship for highest academic achievement. Professor Light subsequently earned an M. Phil in Politics from Oxford University where she was a Rhodes Scholar. Light received her J.D. from Yale Law School. Prior to joining the Wharton faculty, Professor Light served for ten years as an Assistant United States Attorney for the Southern District of New York, Civil Division, and for four of those years as the Chief of the Office's Environmental Protection Unit. In that capacity, Light represented the United States and its agencies in affirmative, defensive, and bankruptcy litigation and settlement negotiations.

Professor Light has previously taught Sustainability Management, Law and Policy at the Earth Institute at Columbia University, and Environmental Dispute Resolution as a Visiting Assistant Professor at Brooklyn Law School.