

**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 2016**

I. INSTRUCTOR

Professor Sarah E. Light
Email: lightsa@wharton.upenn.edu (best method of contact)
Office Phone: 215-573-0575
Office: 661 Huntsman Hall
Office Hours: [To be announced] and by appointment

II. CLASS MEETING TIMES AND LOCATION

Tuesdays and Thursdays 1:30pm-3pm
Location: JMHH _____

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
- Individual Paper # 1: 15% due *Monday*, February 8th, by 5:00pm via Canvas
- Individual Paper # 2: 35% due Tuesday, March 22nd, by 1:30pm via Canvas
- Final Group Project: 30% to be presented on several dates in class

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 Monday, February 8th, by 5:00pm. Individual Paper # 1 will be on an assigned topic. The paper must be no more than 1,000 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 9th.* 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 9th, when we will discuss student responses to the assignment, will result in no credit on that assignment.

Individual Paper #2: Due Tuesday, March 22nd, at or before the start of class via Canvas.

Individual Paper # 2 will be on a relevant topic in environmental policy, law, or management related to material assigned in the course. The paper must be no more than 1,500 words. I will provide further details in class.

Final Group Project: Each student must participate in a group project on a topic of the group's choosing. 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, the Great Pacific Garbage Patch, the Sustainable Design of Seattle's Bullitt Center, and the California Drought among others. Toward 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 (in the past, it has been 3-4 students per 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. Your written materials and slides are due to the Professor **by 5pm the day before** your group presents to the class.

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: Thursday, January 14

Introduction to Sustainability, Environmental Management, Law and Policy

Readings for Today:

- Wal-Mart's Sustainability Strategy, 2007 [Coursepack #1]
- Royal Bank of Canada – Financing Oil Sands [Coursepack #2]
- I will hand out readings for the SHARC exercise

Class 2: Tuesday, January 19

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: Thursday, January 21

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: Tuesday, January 26

**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: Thursday, January 28

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.
- *I will hand out the Assignment for Individual Paper #1.*

Class 6: Tuesday, February 2

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

Readings for Today:

- S&T, Chapter 3, Parts I & II
- *Chevron v. Natural Resources Defense Council* (S. Ct. 1984) [Coursepack #10]

Class 7: Thursday, February 4

Pollution Prevention and Hazardous Waste Management: Superfund and RCRA

Readings for Today:

- S&T, Chapter 9
- *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 Monday, February 8th by 5:00pm via Canvas.

Class 8: Tuesday, February 9

Current Issues in Waste Management: E-Waste

Readings for Today:

- Readings to be posted to Canvas

Class 9: Thursday, February 11

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

Readings for Today:

- S&T, Chapters 5 & 6
- *Massachusetts v. EPA* (S. Ct. 2007) [Coursepack #12]

Class 10: Tuesday, February 16

Clean Air and Climate Change after *Massachusetts v. EPA* in the Transportation and Electricity Generation Sectors

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

- Jody Freeman, *The Obama Administration's National Auto Policy: Lessons from the Car Deal*, 35 Harv. Env'tl. L. Rev. 343 [Coursepack #20]
- EPA, Overview of the Clean Power Plan, <http://www2.epa.gov/sites/production/files/2015-08/documents/fs-cpp-overview.pdf>
- (additional or alternative readings may be posted to Canvas)

- ***In class: Discuss Assignment for Individual Paper #2***
- ***Sign-up in class for Group Presentation dates starting today (3 week open sign up period)***

Class 11: Thursday, February 18
Environmental Markets and Entitlements

Readings for Today:

- Ronald Coase, *The Problem of Social Cost* (1960) [Coursepack # 13] -- pp. 1-19
- Sarah E. Light, *The New Insider Trading: Markets within the Firm*, 34 *Stan. Envtl. L.J.* 1 (2015) (to be posted to Canvas)
- *Optional*: Regional Greenhouse Gas Initiative, <http://www.rggi.org/>
- *Optional*: Proposed Bill, the American Opportunity Carbon Fee Act of 2015 (to be posted to Canvas)

Class 12: Tuesday, February 23
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
- 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] -- Parts II and III

Class 13: Thursday, February 25
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*: <http://insideclimatenews.org/news/02112015/congressmen-SEC-investigation-exxon-climate-risks-XOM>

Class 14: Tuesday, March 1

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 #17]
- U.S. Energy Information Administration, Annual Energy Outlook 2015
[http://www.eia.gov/forecasts/aeo/pdf/0383\(2015\).pdf](http://www.eia.gov/forecasts/aeo/pdf/0383(2015).pdf) (only the Executive Summary is required; full report optional)
- *Optional:* Amanda Leiter, *Fracking, Federalism, and Private Governance*, Harv. Env'tl. L. Rev. (forthcoming 2015) [available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2407102] -- Parts II, III, IV

Class 15: Thursday, March 3

Energy Policy: Guest Speaker, Professor David Spence, McCombs School of Business, University of Texas, Austin¹

Readings for Today:

- To be posted to Canvas

There will no class on Tuesday, March 8 or Thursday, March 10 (Spring Break)

Class 16: Tuesday, March 15

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

- S&T, Chapter 8
- Noah Sachs, *Jumping the Pond: Transnational Law and the Future of Chemical Regulation*, 62 Vand. L. Rev. 1817 (2009) [Part I only] [Coursepack #18]

Class 17: Thursday, March 17

Land Use, Zoning, and Takings as a Form of Environmental Control

Readings for Today:

- *Village of Euclid v. Ambler Realty Co.* (S. Ct. 1926) [Coursepack # 19]
- *Penn Central Transp. Co. v. New York*, 438 U.S. 104 (1978) [Coursepack # 21]
- *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992) [Coursepack # 22]

¹ Thanks to the Kleinman Center for Energy Policy for supporting this guest programming.

Class 18: Tuesday, March 22

Insurance, Climate Change Adaptation, and Resilience: Flooding and Sea Level Rise

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 # 23]
- *Optional*: Christopher Serkin, *Passive Takings: State Inaction and the Duty to Protect Property*, 113 Mich. L. Rev. 345 (2015) [*available at*: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2419482]
- *Optional*: <http://www.businessweek.com/articles/2013-08-22/femas-new-flood-maps-pressure-homeowners-to-raise-their-houses>
- *Due today by 3pm via Canvas: Individual Paper #2.*

Class 19: Thursday, March 24

Clean Water: From Pollution Prevention to Sustainability

Readings for Today:

- S&T, Chapter 7
- Coca-Cola Sustainability Report, 2014-15 *available at*: <http://www.coca-colacompany.com/water-stewardship-replenish-report/> -- Read sections only on Water
- *Additional readings to be posted regarding California Drought (note: this area is evolving both in law and policy)*

Class 20: Tuesday, March 29

Product Stewardship: Bottled Water

Readings for today:

- FIJI Water and Corporate Social Responsibility: Green Makeover or Greenwashing? [Coursepack # 25]
- FTC Green Guides, available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf>
- I will provide instructions in class for the group exercise on bottled water.

Class 21: Thursday, March 31

Environmental Protection and the Corporate Responsibility Debate

Readings for today:

- Milton Friedman, *The Social Responsibility of Firms is to Increase Profits* [Coursepack #26]
- Michael Porter & Claas Van der Linde, *Green & Competitive: Ending the Stalemate*, Harvard Business Review, 73/5 (Sept./Oct. 1995): 122-133 [Coursepack #27]
- <https://www.whitehouse.gov/the-press-office/2015/10/19/fact-sheet-white-house-announces-commitments-american-business-act>

Class 22: Tuesday, April 5

Lifecycle Analysis and Assessment: Promises and Limitations

Guest Speaker: Gary Survis

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/D/TI1208xPA-LifeCycleApproach-Howbusinessusesit.pdf>
- *Cradle-to-Cradle Design at Herman Miller: Moving toward Environmental Sustainability* [Coursepack #28]
- Michael Braungart et al., *Cradle-to-cradle design: creating healthy emissions*, Journal of Cleaner Production (2006) [Coursepack #29]

Class 23: Thursday, April 7

New Forms of Business: The Sharing Economy and the Environment

Readings for today:

- Car2Go: Individual Urban Mobility and the Sharing Economy [Coursepack #24]
- Sarah E. Light, *The Sharing Economy, Federalism, and the Environment* (to be posted to Canvas)

Class 24: Tuesday, April 12

Student Project Presentations

Class 25: Thursday, April 14

Student Project Presentations

Class 26: Tuesday, April 19

Student Project Presentations

Class 27: Thursday, April 21

Student Project Presentations

Class 28: Tuesday, April 26

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.