

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

**LGST 8150
ENERGY AND ENVIRONMENTAL LAW FOR BUSINESS
Fall 2023**

I. INSTRUCTORS

Emily S. Fisher, Executive Vice President, Clean Energy, and General Counsel & Corporate Secretary, Edison Electric Institute, Washington, DC (efisher@eei.org)

Margaret E. Peloso, Global Climate Officer, Chubb Group, Philadelphia, PA (margaret.peloso@chubb.com)

Corinne V. Snow, Counsel, Vinson & Elkins LLP, New York, NY (csnow@velaw.com)

II. CLASS MEETING TIMES AND LOCATION

Thursdays 3:30 – 6:30 pm

Location: Room 365

III. COURSE OBJECTIVES

Environmental law shapes both where and how businesses operate, what transactions occur, and where and how corporations will invest in the energy transition and climate resilience. Environmental law is not static and not just about requirements and prohibitions. Environmental considerations for businesses—legal, ethical, and practical—also are a function of evolving conceptions about the role of business, the role of government, and the role of other key stakeholders in the responding to climate change and the energy transition. Throughout the semester, we will cover the fundamental federal environmental statutes and how they shape business decisionmaking. We will frequently return to climate change and energy project development as a lens through which to examine how statutory tools and process shape business decisionmaking, and how these can shape the continued evolution of environmental law.

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

IV. TEXTS AND READINGS

There is no assigned textbook for this class. Readings will be provided via Study.net and Canvas per Wharton policies.

V. ASSIGNMENTS AND GRADING

Students will be required to complete the following assignments. There is no final exam in this course.

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

- **Class participation: 25%**
 - Attendance and participation in class discussions and exercises
- **Quizzes: 40%**
 - There will be five short quizzes consisting of multiple-choice and short answer questions over the course of the semester.
 - We will drop the lowest quiz score.
- **Timely Submission of Issues List for Final Group Presentation: 5%**
 - Due **Thursday, October 5, by 11:59 pm EST** via Canvas
- **Final Group Presentation: 30%**
 - 12 minutes/12 slides/plus Q&A
 - Slides & Bibliography due **Tuesday, November 14, by 11:59 pm EST**

Class Attendance and Participation:

Participation: Students are expected to attend class, to prepare for classes conscientiously, and to contribute to the class discussion. This means providing thoughtful commentary (not just many comments), engaging in analysis, and/or posing relevant questions. It also means being prepared to discuss the readings, including legal cases and other materials.

Attendance: Each student is permitted two “freebie” absences during the term for any reason without a penalty, if you provide advance notice (an email before class is fine). These can be used for job interviews, or other extracurricular activities, travel that conflicts with class, etc. that otherwise would not qualify as an excused absence. Beyond those free absences, we mark absences either as excused or unexcused.

- **Excused absences** include: family or personal health/medical emergencies; and religious holidays. Job interviews and extracurricular activities are *not* excused absences—you should save your freebies for those. A significant number of unexcused absences will have a negative impact on your grade.

General Guidelines for Assignments. We have intentionally given you plenty of time to complete all assignments, so all assignments must be handed in on time. If an assignment is late for any unexcused reason, it is penalized one third of a grade level for each 24-hour period or portion thereof it is late (*i.e.*, an A would become A-; an A- would become B+, etc.).

- **Extenuating Circumstances:** If there are extenuating circumstances of which you are aware that will affect your ability to complete an assignment on time, please contact us as soon as possible to discuss whether an accommodation or extension is needed. Extenuating

circumstances may be the same types of reasons that qualify for an excused absence, and, further, include mental health considerations.

Please note: Assignments must be submitted via Canvas in Word format (not .pdf), unless otherwise noted.

Quizzes:

- There will be five short quizzes on Canvas that will cover material from the readings and class discussions. Each quiz needs to be taken between the end of class on Thursday at 6:30 pm and the following Monday at noon, regardless of whether that day is a holiday. Each quiz will be available on Canvas for this entire time period.
- Each quiz will be approximately 3–5 questions and will draw on the class sessions and readings leading up to the quiz from the date of the prior quiz (they are not cumulative, though they may cover broader course themes that recur throughout the course and that are introduced in the first few class sessions).
- To succeed on the quizzes, you must do the readings and attend the class sessions. Quizzes are open note/slides, and you may refer to any assigned readings from the course, **but you may not engage in any general internet searches (no googling) or use of AI tools (e.g., ChatGPT).** However, each quiz has a 45-minute time limit—if you have to look up every answer, you will not have time to complete the quiz.
- All standards of Academic Integrity apply to the quizzes. It goes without saying that you are not permitted to share quiz questions or answers with other students in the course. Any cheating will be handled in accordance with University policy and can be grounds for failing the entire course (not just the quiz).
- Students will not have the option to take quizzes late or to make-up missed quizzes.
- Your lowest quiz score will be dropped.

Final Group Presentations and Proposed Topics:

- Each student must participate in a final group presentation. Your group will be presenting to your firm's Investment Committee regarding the acquisition of an energy development or related project. The presentation must identify the material environmental issues presented by this project and, where possible, potential solutions. Your group should choose a project from the list that is provided on Canvas.
- The potential issues list, also on Canvas, should guide the development of your group project. Not all issues will apply to all projects. Your group will have the opportunity to review the issues list with one of the instructors if so desired.
- Your group's markup of the potential issues list and any additional diligence questions should be submitted on Canvas by **Thursday, October 5th at 11:59 pm EST.**
- Your **slides** and **bibliography** for the final group presentation are due via Canvas on **Tuesday, November 14th by 11:59 pm EST.** Presentations will take place on several dates during the final weeks of class.
- Grades for the group projects will be based on the quality of the final presentation itself, how well the group's presentation coheres as a whole, as well as the quality of sources and research as cited in the bibliography. Students may use notes during their presentations, but should not read the presentation from a written document.

- **Citations, Collaboration, and Plagiarism.** Submissions must represent only the student's own creative work and effort. **We take plagiarism and cheating very seriously and will deal with such actions according to University policy.**

For your Group Presentation, you must use a consistent citation method for sources. Any source you quote or rely on must be footnoted in a bibliography, with source and page references, 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, including for charts and graphics in slides. No statement that relies on a source should fail to reference the source.

Final project topics should be selected from the list below by signing up for a Group on Canvas.

1. LNG siting
 - Port Arthur LNG, <https://portarthurlng.com/>;
2. Transmission line
 - Cardinal Hickory Creek, <https://www.cardinal-hickorycreek.com/>
 - Ten West Link, <https://tenwestlink.com/>
 - New England Clean Energy Connect, <https://www.necleanenergyconnect.org/>
3. Onshore windfarm
 - Clearwater Wind Project, <https://www.nexteraenergyresources.com/clearwater-wind/project-overview.html>
4. Offshore windfarm
 - Vineyard Wind 1, <https://www.vineyardwind.com/vineyardwind-1>
5. Combined solar, wind, storage project
 - Wheatridge Renewable Energy Facility, <https://portlandgeneral.com/about/who-we-are/innovative-energy/wheatridge-renewable-energy-facility>
6. Solar project in the desert
 - Golden Currant Solar Project, <https://www.blm.gov/press-release/bureau-land-management-begin-nepa-process-golden-currant-solar-project-application>
7. Combined solar/storage/wind projects
 - Wheatridge Renewable Energy Facility, <https://portlandgeneral.com/about/who-we-are/innovative-energy/wheatridge-renewable-energy-facility>
8. CCS project
 - Polk Power Station CCS, <https://www.powermag.com/doe-backs-carbon-capture-development-at-two-major-gas-fired-power-plants/>
9. H₂ or CO₂ pipeline
 - MidWest Carbon Express, <https://www.enr.com/articles/53997-first-interstate-carbon-capture-pipelines-proposed-in-us>

10. Biofuels/biomass

- Comstock, https://www.energy.gov/sites/default/files/2023-01/2638-1556_Comstock_Inc_Subtopic_Area_1_SummaryAbstract.pdf

11. Sustainable aviation fuels

- Algenesis, <https://www.energy.gov/sites/default/files/2023-01/SUMMARY%20FOR%20PUBLIC%20RELEASE.pdf>

VI. CLASS EXPECTATIONS

- We will start and end class on time.
- You are welcome to bring tablets and laptops to class to the extent that they are helpful when reviewing class readings.
- Cell phones cannot be used during class.

VII. COURSE OUTLINE

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

Class 1: Thursday, August 31

What are the Sources of Environmental Law? (MEP)

Readings:

- Orrin Kerr, How to Read a Legal Opinion, *11 The Green Bag 2d 51* (2007).
- Pamela Hill, *Environmental Protection: What Everyone Needs to Know* (Oxford Univ. Press 2017) Chs. 1, 3, 4
- Business Roundtable, Statement on the Purpose of a Corporation (2019), https://system.businessroundtable.org/app/uploads/sites/5/2023/02/WSJ_BRT_POC_Ad.pdf
- Stuart Buck, *The Common Law and the Environment in the Courts*, 58 Case Western Reserve L.Rev. 621 (2008).
- *Held v. Montana*, CDV-2020-307, (Mont. 1st Dist. Ct. Aug. 14, 2023), <https://westernlaw.org/wp-content/uploads/2023/08/2023.08.14-Held-v.-Montana-victory-order.pdf>

Introduction to the class and final projects

Class 2: Thursday, September 7

Administrative Law, Public Participation, and Judicial Challenges (CVS)

Guest: Seth Barsky, Deputy Assistant Attorney General of the Environment and Natural Resource Division, U.S. Department of Justice

Readings:

1. An Overview of Federal Regulations and the Rulemaking Process
2. Case excerpts

- a. *Sierra Club v. Morton*
- b. *Lujan v. Defenders of Wildlife*
- c. *Massachusetts v. EPA*
- d. *Note: The specific facts of these cases are not important; focus more of the court's explanation for why the parties could or could not challenge the agency's action in court, and how the court treated the agency's decisionmaking process and final decision in their analysis.*

3. **Materials Related to EPA's Methane Proposed Rules**

- a. Review the Harvard Law School Environmental & Energy Law Program tracker for EPA VOC and Methane Standards for Oil and Gas Facilities including Timeline of Events, <https://eelp.law.harvard.edu/2019/09/epa-voc-and-methane-standards-for-oil-and-gas-facilities/>
Note: Skim for context and general timeline but no need to try to memorize details.
- b. Read Proposed Methane Rule Excerpts
Note: This is just to show you what a proposed rule looks like, just skim.
- c. Read EPA's Bulk Up Quads
Note: To provide a general overview of changes in proposed rule
- d. Read EPA Methane Rules Supplemental Proposal – Public Comment Strategy
Note: To provide background on public comments.
- e. Read US Chamber of Commerce Comment Letter
Note: This is to give an example of the kinds of policy, practical, and legal arguments that parties raise during the comment letter; skim but no need to memorize details.

Quiz: Sources of law

Class 3: Thursday, September 14 **CERCLA and RCRA (MEP)**

Readings:

- *United States v. Bestfoods*, 524 U.S. 51 (1998)
- *Cooper Industries v. Aviall Services*, 543 U.S. 157 (2004)
- *Conservation Law Foundation v. ExxonMobil*, 448 F. Supp. 3d 7 (2020)
- Case study background materials

Case Study: Cutting edge issues around emerging contaminants, PFAS, and the DuPont settlements

Quiz: CERCLA/RCRA

Class 4: Thursday, September 21

Clean Water Act and “Waters of the United States” (CVS)

Guest: Jonathan Brightbill, Partner at Winston Strawn and Former Acting Assistant Attorney General of the Environment and Natural Resource Division, U.S. Department of Justice

Readings:

- Waters of the United States (WOTUS) Frequently Asked Questions about the Scope of the Clean Water Act
 - *Read for background and historical context on the various rules proposed and legal and practical concerns.*
- Review the Harvard Law School Environmental & Energy Law Program tracker for Defining Waters of the United States (WOTUS), including the timeline under each administration, <https://eelp.law.harvard.edu/2017/09/defining-waters-of-the-united-states-clean-water-rule/>
 - *Note: Skim for context and general timeline but no need to try to memorize details.*
- Articles discussing *Sackett*
- *Sackett v. EPA* excerpts
- Announcement regarding updated WOTUS Rule

Case discussion and hypotheticals: Identifying a WOTUS and project development considerations

Class 5: Thursday, September 28

Clean Air Act – Stationary Sources: Using Old Tools to Solve New Problems (ESF)

Readings:

- Congressional Research Service, Clean Air Act: A Summary of the Act and Its Major Requirements (Sept. 13, 2022)(also for Class 6)
- Congressional Research Service, Clean Air Act Permitting: Implementation and Issues (Sept. 1, 2016)
- EPA, Greenhouse Gas Standards and Guidelines for Fossil Fuel-Fired Power Plants, PowerPoint presentation (June 2023)
- *Massachusetts v. EPA*, 549 U.S. 497 (2007)(majority opinion only) (also for Class 6)
- *West Virginia v. EPA*, 597 U.S. ____ (2022)(majority opinion and J. Kagan dissent)

Class 6: Thursday, October 5

Clean Air Act – Mobile Sources: Regulations, Enforcement, and Transportation Electrification (ESF)

Guest: Evan Belcher, Policy Strategist and Managing Counsel, Ford Motor Company

Readings:

- *Massachusetts v. EPA*, 549 U.S. 497 (2007)(majority opinion only)
- Leslie Fair, Federal Trade Commission, Blog, Looking at the VW Case in the Rearview Mirror (July 27, 2020)
- Environmental Protection Agency, Volkswagen Clean Air Act Civil Settlement

- Readings from Class 5

Quiz: Clean Water Act and Clean Air Act

Class 7: Thursday, October 26

Energy Project Development – Getting projects on the grid: planning, permitting, and interconnecting to the grid (ESF)

Readings:

- Federal Energy Regulatory Commission, Energy Primer, Staff Report (Apr. 2020) (chs. 4 and 6 are optional)
- Congressional Research Service, Introduction to Electricity Transmission (Nov. 18, 2022)
- Resources for the Future, Electricity 101: Terms and Definitions (Mar. 3, 2020)
- Final Environmental Impact Statement and Proposed Resource Management Plan Amendments for Ten West Link Project (Sept. 2019) (Executive Summary, ch. 1, skim ch. 4)

Class 8: Thursday, November 2

Energy Project Development – Permitting, NEPA, and the Endangered Species Act (CVS)

Guest: Brandon Tuck, Counsel at Vinson & Elkins

Readings:

1. Short Articles

- Infrastructure Permitting Reform Would Help the Economy
- NEPA is Under Threat —Here's Why That Matters
- Overview of the Mountain Valley Pipeline Project
- What you need to know about the Mountain Valley Pipeline
- Stop the MVP
- Supreme Court rules in favor of Mountain Valley Pipeline
- MVP Application to Vacate Stay
- Reluctant 4th Circuit Greenlights Mountain Valley Pipeline
- Read all of the short articles for background*
- Review the Harvard Law School Environmental & Energy Law Program tracker for Mountain Valley Pipeline:
<https://eelp.law.harvard.edu/2023/06/mountain-valley-pipeline/>

2. Case excerpts

- Select 3 of the following case excerpts to read:*
 - Wild Virginia v. United States Forest Service*
 - Sierra Club v. Federal Energy Regulatory Commission*
 - Sierra Club v. Interior*
 - Sierra Club v. West Virginia Department of Environmental Protection*
 - Appalachian Voices v. State Water Control Board*
 - Defenders of Wildlife v Interior*
 - Mountain Valley Pipeline v. McCurdy*

Note: As you read, think about all of the ways a project could get postponed for legal review or by a court.

Class discussion based on Mountain Valley Pipeline

Quiz: NEPA/ESA

Class 9: Thursday, November 9

Private Environmental Governance/ESG (MEP)

Readings:

- KPMG, IFRS Sustainability Disclosure Standards pages 1–53 (2023), <https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2023/07/isg-first-impressions-sustainability-reporting-general-and-climate-related-requirements.pdf>
- Bloomberg Law, *Comparison of ESG Reporting Frameworks* (Aug. 11, 2022), <https://pro.bloomberglaw.com/brief/comparison-of-esg-reporting-frameworks/>

Case Study: How to advise on what disclosures a company needs to make

Class 10: Thursday, November 16

Environmental Justice (ESJ)

Guests: Conrad Bolston, Senior Counsel for Environmental Justice and Equity for the Federal Energy Regulatory Commission
Kathryn McCormack, Supervisor, Environmental Justice, Dominion Energy

Case Study based on decision of the City of Chicago issued to deny a permit application for a proposed Reserve Management Group facility in the southeast side of Chicago.

<https://www.epa.gov/newsreleases/statement-administrator-regan-rmg-permit-denial-city-chicago>

Quiz: ESG/EJ

Class 11: Tuesday, November 21

Student Project Presentations

Class 12: Thursday, November 30

Student Project Presentations