

FALL 2010 SYLLABUS FOR ENVIRONMENTAL LAW & POLICY**FALL 2010 (as of July 19, 2010)****Professor Alan Ramo**

Class Overview: In Environmental Law and Policy, we review a number of the key landmark laws and doctrines that are at the core of United States environmental regulation. This is not a theoretical class, the teachers and the curriculum focus on the practical implementation of these laws and policies as well as review emerging issues that will be the subject of environmental disputes for years to come. The class includes review of various federal laws including the Clean Water Act, Clean Air Act, National Environmental Policy Act and the Endangered Species Act. We will look at the roles of the government, business and the individual citizen in assuring environmental protection.

Reading Materials:

We will use as materials: (1) Percival, Miller, Schroeder, and Leape ENVIRONMENTAL REGULATION: LAW, SCIENCE AND POLICY (6th Edition) (Casebook) ISBN: 9780735584624 and (2) a Supplemental Course Reader, available from the law faculty center. West's SELECTED ENVIRONMENTAL LAW STATUTES, 2009-10 Educational Edition (Statutes) ISBN 9780735579453 is *recommended*; however, all of the assigned statutory readings have been posted on the TWEN website for the course.

Learning Outcomes:

This class has the following objectives:

1. Develop student familiarity with environmental laws and related issues through a review of major environmental laws and contemporary issues through readings, class discussion, problem analysis, assignments and preparation for mid-term and final examinations
2. Develop student proficiency in statutory and regulatory interpretation of environmental laws;
3. Develop student proficiency in case opinion analysis including identify key components of a decision and the development of rules from multiple opinions;
4. Develop student proficiency in legal/factual analysis including identifying key facts, issue spotting and legal reasoning in problem analysis;
5. Develop student proficiency in writing skills and written legal analysis, including memo drafting, persuasive writing and exam essays;
6. Develop student proficiency in policy analysis by identifying key social and economic and scientific environmental issues and how they relate to the drafting of statutes and regulations;

7. Developing student oral skills through oral participation in the classroom;
8. Developing student negotiation skills through a model mediation exercise;

Urban Problem Assignments

Urban Problem 1

Company plans to construct a factory next to the East River in Newby, California. The factory generates waste water effluent, and thus requires a permit from EPA to discharge the pollutants from an outfall pipe about one mile downstream from the factory. California officials are concerned about the possible impacts of the project on water quality in the East River, particularly on wetlands located directly adjacent to the factory and the river. The designated uses of rivers like the East River in California include “high quality fish, wildlife and wetlands habitat, “and public drinking water supply. California has not, however, set numeric standards for any chemicals to protect the designated uses of these rivers. California also has a non-degradation policy requiring that existing uses of all water segments be maintained. Can California impose conditions on the EPA permit requiring Company to limit runoff from cars and trucks at the facility into wetlands in the East River?

Urban Problem 2

Last year Robert Thorp purchased 350 acres of property in Hayward, CA. The property is zoned light residential, and Thorp would like to build 600 townhouses on it. Thorp’s property abuts San Francisco Bay. Of the 350 acres, the Corps of Engineers estimates that 200 acres, interspersed throughout the property, are high quality seasonal wetlands. During winter months, hundreds of migratory birds use the site for feeding and resting purposes. The wetlands also play a role in filtering out pollutants from storm water runoff before the runoff enters the Bay. South San Francisco Bay, including the Hayward area, is out of compliance with several State water quality standards designed to insure that the waters are “fishable.”

Thorp believes that the site is the ideal location for his townhouses because of its proximity to the Bay; he says that it will offer homeowners “world class views.” There are several comparably sized parcels of undeveloped property available in the South Bay (on which there are no wetlands), but Thorp does not own any of these sites, they are not adjacent to the Bay, and Thorp says that as a result developing these sites will be substantially less profitable than developing the Hayward site.

Thorp recognizes that the contemplated filling of wetlands will require some type of mitigation. His proposal is to mitigate the loss of wetlands by purchasing an equivalent number of “wetlands acreage credits” from a “mitigation bank”, i.e. a bank into which other developers, property owners, etc. have deposited their “excess credits.” Once purchased, the credits will result in Thorp restoring or creating 300 acres of seasonal wetlands. The wetlands will be restored or created in several locations around the Bay, including Palo Alto, Oakland, and Santa Rosa.

Please analyze whether Thorp should be allowed to proceed with his project. In particular, please come to class prepared to discuss whether Thorp’s project complies with 40 C.F.R. §§ 230.10(a) & (b). (pp. 74-75, Supplemental Course Reader) and the EPA/Corps Mitigation MOA (pp. 76-78 Supplemental Course Reader).

Urban Problem 3

Apex Oil operates a refinery in Martinez, CA that discharges selenium into the northern part of San Francisco Bay. Selenium is a toxic compound that has been listed as a priority pollutant by EPA under the Clean Water Act. Apex has an NPDES permit which imposes effluent limits on the wastewater discharged by Apex's refinery. The permit limits the amount of selenium that can be discharged to 5.8 lbs/day. The Discharge Monitoring Reports (DMRs) filed by Apex with the Regional Board show that from April 1, 2006 to March 31, 2009, Apex exceeded these discharge limitations on 40 separate dates. Since that time, with the exception of an accidental spill in June 2009, Apex's discharges have been in compliance with its permit. On August 1, 2009, the Sierra Club sent a 60-day notice under to Apex alleging violations of its NPDES permit and threatening to sue under section 505 of the Clean Water Act. Sixty days have passed since the notice was filed. In response to the Sierra Club, Apex has said that it is presently in compliance with its permit. If the Sierra Club sues, will the court have jurisdiction to hear the case?

Urban Problem 4

Bill Polk is the owner of a large, undeveloped piece of property in Sacramento on which he has proposed building a new football/baseball stadium. The stadium construction would be largely financed by the U.S. Dep't of Housing and Urban Development, which under a new federal law pays 75% of the costs of building stadiums in certain areas.

The Polk site is in an area of Sacramento which has grown considerably over the past decade, but is still not that heavily populated. The major road into the area is a four-lane highway, which is often congested, but it is very likely that the highway would be widened by the county when the stadium is built. The stadium plans call for a parking lot that can hold 10,000 cars. Polk has proposed that an adjacent open field be paved over and used as a parking lot. The field has been used for many years as an informal park and play area by local school kids, and a small number of birds and wildlife also utilize it for feeding and resting purposes. Over the past several years there have been several other smaller projects approved in the area that have resulted in the loss of open space used by birds and wildlife.

The new stadium and associated parking facilities will use a lot of electricity, thus requiring the local utility to undertake a major expansion of its existing utility plant. This expansion would result in the increase of two air pollutants regulated by the Clean Air Act, sulfur dioxide (SO_x) and nitrogen oxide (NO_x). Sacramento is currently in compliance with the NAAQS for NO_x, but not for SO_x or ozone (a compound formed in considerable part by hydrocarbon emissions from automobiles). The SIP governing Sacramento requires that the area annually decrease its ozone concentrations by 3% from 2009 to 2012. The utility plant has pledged that it will carry out the expansion of its plant in full compliance with the Clean Air Act.

1. Does NEPA require an EIS in this situation, and if so, what potential impacts from the project must be analyzed?
2. HUD has taken the position that even if there are significant air quality and traffic impacts from the project, no EIS is necessary because as a result of proposed mitigation measures, all of these impacts will be reduced to a level of insignificance. HUD proposes instead to issue a mitigated Finding of No Significant Impact (FONSI). Specifically, Polk has promised that he will implement all of the mitigation measures proposed for the project's air quality impacts that were recommended in a study of the project prepared by a private environmental

consultant. Polk has also pledged \$15,000 annually for the next 5 years to pay for as yet unspecified measures to mitigate the traffic impacts of the project. The proposed HUD permit does not make implementation of the mitigation measures a condition of project approval, nor does it require that any monitoring be done to see if the mitigation measures prove effective in reducing the project's air quality and traffic impacts. Can HUD rely on a mitigated FONSI in this case, or is an EIS required? *See Supplemental Course Reader, pp. 97-101.*