

**VERMONT LAW SCHOOL
ENVIRONMENTAL CRIMES
ENV5480**

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Schedule: July 24–27 and July 31–August 3, 1 to 4 p.m.

Overview: The field of Environmental Crimes includes a wide array of federal statutes directed at preventing pollution, safeguarding human health and natural resources, and preserving fish, wildlife, and plants. This area of law continues to grow in importance as we battle global issues from climate change to the extinction of iconic species. It is also a topic that brings out strong emotions—from cries for more regulation after catastrophic events to complaints of “over-criminalization” when corporate profits dip.

This course will provide an overview of the major U.S. environmental statutes and the impact of certain doctrinal and policy issues on the application of these laws. We will cover both the national and international infrastructure for environmental enforcement. We will also address the use in environmental prosecutions of general crimes such as conspiracy, false statements, fraud, and obstruction of justice; prosecutorial discretion guidelines; sentencing issues; and litigation pitfalls to avoid.

Office Hours: I will be available for questions at the end of each class, as well as daily by telephone or email.

Course Materials: Required reading for the course is set out in the syllabus below. I have attempted to direct you to the relevant portions of all materials. All reading materials are available on TWEN.

Attendance: Regular class attendance is required and is necessary for successful work. I will take attendance over the course of each of our classes. I will call upon people to discuss assigned cases. If you have an emergency that will prevent you from attending, please let me know beforehand, if possible.

Final Exam: Saturday, August 5, 2023: 3-hour, open-book, multiple-choice test.

Environmental Crimes Syllabus	
7/24	<p>Course Overview</p> <p>Corporate Liability</p> <ul style="list-style-type: none"> • <i>New York Central and Hudson River Railroad Co. v. United States</i>, 212 U.S. 481, 489-496 (1909) • <i>United States v. Hilton Hotels</i>, 467 F.2d 1000, 1004-1007 (9th Cir. 1972) • <i>United States v. Bank of New England</i>, 821 F.2d 844, 854-857 (1st Cir. 1987) <p>Prosecution Guidelines</p> <p>Mental States</p> <ul style="list-style-type: none"> • Handout: The Public Welfare Doctrine • <i>United States v. Int’l Minerals & Chemical Corp.</i>, 402 U.S. 558 (1971) majority opinion • <i>Staples v. United States</i>, 511 U.S. 600 (1994) majority opinion • <i>United States v. Bryan</i>, 524 U.S. 184, 186-196 & 200-205 (1998)
7/25	<p>The Clean Water Act</p> <ul style="list-style-type: none"> • 33 U.S.C. §§ 1311(a), 1317(d), 1319(c), 1321(b)(3), 1342(a)(1), (b) and (i), 1344(a) and (e), and 1362(3)-(12), (14), and (19); WOTUS: 33 C.F.R § 328.3 (ACOE), 40 C.F.R. § 120.2 (EPA) Pretreatment: 40 C.F.R. §§ 403.3(d), (j), (k), (l), (p), (q), (r), (s), and (t), 403.5(a), (b) and (d), 403.17 • <i>United States v. Iverson</i>, 162 F.3d 1015, 1018-1019, 1022-26 (9th Cir. 1998) • <i>United States v. Bailey</i>, 571 F.3d 791 (8th Cir. 2009)

<p>7/26</p>	<ul style="list-style-type: none"> • Case Study: <i>United States v. Big Hill Acres, et al.</i>, Southern District of Mississippi • <i>Sackett v. EPA</i>, ___ U.S. ___ (May 25, 2023), 2023 WL 3632751, majority opinion, Kagan concurring opinion, and Kavanaugh concurring opinion • <i>County of Maui, Hawaii v. Hawaii Wildlife Fund</i>, 140 S. Ct. 1462 (2020) majority opinion • <i>United States v. Hanousek</i>, 176 F.3d 1116, 1119-22 (9th Cir. 1999) <p>International Law</p> <p>The Act to Prevent Pollution from Ships</p> <ul style="list-style-type: none"> • 14 U.S.C. § 522; 33 U.S.C. §§ 1907(c), (d), and (e), 1908(a); 33 C.F.R. §§ 151.11, 151.15, and 151.25 • <i>United States v. Jho</i>, 534 F.3d 398 (5th Cir. 2008) <p>Practical Exercise</p>
<p>7/27</p>	<p>The Clean Air Act</p> <ul style="list-style-type: none"> • 42 U.S.C. §§ 7412(r)(1) through 7412(r)(6)(G), and 7412(r)(7)(A) and (B), 7413(c) and (h); 40 C.F.R. §§ 61.141, 61.145, 61.150 • <i>United States v. Pearson</i>, 274 F.3d 1225, 1228-33 (9th Cir. 2001) • <i>United States v. Starnes</i>, 583 F.3d 196, 202-08 (3d Cir. 2009) <p>Practical Exercise</p> <p>Case Study: <i>United States v. Volkswagen</i>, Eastern District of Michigan</p>
<p>7/31</p>	<p>The Resource Conservation and Recovery Act</p> <ul style="list-style-type: none"> • 42 U.S.C. §§ 6903(3), (5), (12), (27), (33) and (34), 6926 and 6928(d) - (f); 40 C.F.R. §§ 261.2, 261.3, 261.4, 261.6, 261.7, 261.20-261.24, 261.30-261.33 [skim]

	<ul style="list-style-type: none"> • <i>United States v. Hayes Int'l Corp.</i>, 786 F.2d 1499 (11th Cir. 1986) • <i>United States v. Laughlin</i>, 10 F.3d 961 (2d Cir. 1993) • <i>United States v. Self</i>, 2 F.3d 1071, 1085-92 (10th Cir. 1993) <p>The Comprehensive Environmental Response, Compensation, and Liability Act</p> <ul style="list-style-type: none"> • 42 U.S.C. § 9603(b) <p>The Federal Insecticide, Fungicide, and Rodenticide Act</p> <ul style="list-style-type: none"> • 7 U.S.C. §§ 136(e), 136j, 136l(b) <p>Practical Exercise</p>
<p>8/1</p>	<p>Endangerment Crimes</p> <ul style="list-style-type: none"> • CWA: 33 U.S.C. § 1319(c)(4) • RCRA: 42 U.S.C. § 6928(e)-(f) • CAA: 42 U.S.C. § 7413(c)(5) • Toxic Substances Control Act: 15 U.S.C. § 2615(b) • Occupational Safety and Health Act: 29 U.S.C. § 666 • <i>Yates v. United States</i>, 574 U.S. 528 (2015), plurality and dissenting opinions <p>Case Study: <i>United States v. Atlantic States Cast Iron Pipe, Co.</i>, District of New Jersey</p>
<p>8/2</p>	<p>The Lacey Act</p> <ul style="list-style-type: none"> • 16 U.S.C. §§ 3372, 3373 <p>The Endangered Species Act</p> <ul style="list-style-type: none"> • 16 U.S.C. §§ 1538, 1540

	<p>The Migratory Bird Treaty Act</p> <ul style="list-style-type: none"> • 16 U.S.C. § 703 <p>The Bald And Golden Eagle Protection Act</p> <ul style="list-style-type: none"> • 16 U.S.C. § 668 <p>Case Study: <i>United States v. Lumber Liquidators</i>, Eastern District of Virginia</p> <p>Practical Exercise</p>
<p>8/3</p>	<p>Grand Jury and Discovery</p> <ul style="list-style-type: none"> • Fed. R. Crim. P. 6 & 16 <p>Crime Victims' Rights Act</p> <ul style="list-style-type: none"> • 18 U.S.C. § 3771 <p>Sentencing</p> <ul style="list-style-type: none"> • 18 U.S.C. §§ 3553(a), 3571 • Handout: U.S. Sentencing Guidelines Provisions • <i>United States v. Bogas</i>, 920 F.2d 363 (6th Cir. 1990) • <i>United States v. Sawyer</i>, 825 F.3d 287 (6th Cir. 2016) <p>Practical Exercise</p>