GLY- 3530-101 **Environmental Regulation and Enforcement**

**Draft** Syllabus/Course Description

M, W 2:00-3:15, 023 RSW

Fall, 2013

**Lauren Waterworth, M.S., J.D.**

Lecturer, Department of Geology

Office: Rm. 076, Rankin Science Bldg., West

Phone: (828) 262-4980

Email: [waterworthlh@appstate.edu](mailto:waterworthlh@appstate.edu)

**Office Hours: TBD**

**Course Goals and Objectives:** The purpose of this course is to equip students with an understanding of environmental regulation in the U.S., from its origin as environmental policy to its application and enforcement. This course will provide students with an overview of 1) the role and responsibilities of regulators, 2) the various aspects of industry regulation (with special emphasis on the surface mining industry), and 3) aspects of environmental and safety regulation applicable to industry consultants. The course will conclude with a survey of the different mechanisms of regulatory enforcement. Throughout the course, students will be asked to consider and evaluate the varying and often competing interests of industry, regulatory agencies, and private citizens who are impacted by environmental regulation (or the lack of it). ***This course will benefit any student who intends to work in environmental consulting, industry, government, or environmental advocacy.***

**Text:** Text for the course will be assigned readings consisting of scholarly articles, news reports, published government guidance documents, and case law.

**Office Hours:** My office hours are listed above and on [AsULearn](http://asulearn.appstate.edu/index.php?shib-logout-idp=1). I am also happy to schedule an appointment with you outside of my regular office hours. If you need assistance, ***please*** ***do not hesitate*** to talk to me.

**Grading**[[1]](#footnote-1)**:**

10% Attendance/Participation

20% Daily Outlines

30% Presentations (3 presentations; 10% each)

15% Short Essays (3 essays; 5% each)

25% Final Project Write-up

**Attendance/Participation:** If you miss more than four classes (for any reason, excused or unexcused), you will automatically fail this course. ***No exceptions.*** In addition to absences, you may use ***two “passes”*** for participation: If you are unprepared for class, you may inform me before class and I will not call on you or expect you to participate in discussion. You may not use a “pass” for days on which presentations or other class exercises are due.

**Schedule of Topics and Assignments:**

|  |  |  |  |
| --- | --- | --- | --- |
| **[Class #]** | **Topic** | **In Class** | **Reading[[2]](#footnote-2) & Assignments** |
|  | | | |
|  | **Introduction** | | |
| 1 | Environmental Ethics: The Tragedy of the Commons v. Survival of the Fittest | Class Discussion Exercise |  |
| 2 | History of U.S. Environmental Law and Regulation: Civil Rights and Social Unrest | Lecture |  |
| 3 | Constitutional Bases, Authorizing Statutes and Administrative Agencies | Lecture |  |
| 4 | A Primer on Policy and the Process of Regulation under the Administrative Procedure Act (“APA”) | Lecture/Guest Speaker (Environmental Policy expert) | Prepare presentation of assigned environmental statute |
| 5 | Survey of U.S. Environmental Regulation | Statute Presentations |  |
| 6 | Environmental Justice: Understanding the Issues | Lecture/Class Discussion |  |
|  | | | |
|  | **Regulating the Regulator** | | |
| 7 | The NEPA Process - Step-by-step guide to EA/EIS/FONSI and public comment process | Lecture & demo of “finding” an EIS for public comment. |  |
| 8 | An Introduction to Risk Assessment and Management: How agencies cope with scientific uncertainty | Lecture | Prepare public comments |
| 9 | Protecting the Public Interest and who is the “public” anyway? Regulator’s role in preventing environmental discrimination | Public Comment Exercise | Deadline to choose an Industry/Agency and area of law for final project. |
|  | | | |
|  | **Regulating Industry (Surface Mining)** | | |
| 10 | Property Rights and Responsibilities; Role of the “land man” | Lecture |  |
| 11 | The SMCRA (Surface Mining Control and Reclamation Act): Reclamation Bonding and Process; Lands Unsuitable for Mining (Blair Mountain example? Coal River Mtn. example?) | Documentary Film review (The Last Mountain?) | Deadline to meet with professor to discuss final project and choose an enforcement action to research. |
| 12 | The Clean Water Act: 402 and 404 permit application process and compliance | Lecture | Review/Reaction paper on documentary film, The Last Mountain (?) |
| 13 | Conversion to Energy: Storage/use of byproducts (Kingston, TN ash spill case study) | Guest Speaker/s (Panel?) | Prepare debate arguments |
| 14 | Conversion to Energy: Clean Air Act – the new Hg Rule; New Source Review Process | Lecture |  |
| 15 | The Reality of Climate Change and Its Current Regulation | Lecture |  |
| 16 | Conversion to Energy: Renewable Energy Portfolio Standards; exports and the global economy; and subsidies: the myths and realities of “corporate welfare” | Class Discussion/Debate Exercise | Prepare presentation of the history and background of the enforcement action for final project. |
|  | | | |
| 17 | **Preliminary Presentation of Final Project[[3]](#footnote-3)** | Initial Project Presentations |  |
|  | | | |
|  | **Consultants and Industry Operations** | | |
| 18 | Phase I Site Assessments | Guest Speaker – Consultant |  |
| 19 | Laboratory QA/QC and NELAC Certification | Guest Speaker – geochem lab owner/technician |  |
| 20 | The OSHA (history and purpose, implementation, and whistleblower protection) | Guest Speaker - Inspector | Submit draft of background and history portion of final project write-up and outline of the enforcement evaluation section. |
|  | | | |
|  | **Enforcement** | | |
| 21 | Civil Enforcement and Citizens Suits, Civil Rights Act | Lecture/movie review | (movie options: A Civil Action, Michael Clayton, Erin Brockovich, The Pelican Brief, Coal Rush…) |
| 22 | Criminal Enforcement | Lecture/Guest speaker? – DOJ Env. Crimes atty. |  |
| 23 | Administrative Enforcement Actions, Citizen Intervention, Agency-Forcing Actions, and another note about Whistleblowers | Lecture | Deadline to meet with professor to discuss completion of final project. |
| 24 | BP Oil Spill Case Study and the RESTORE Act | Lecture/Class Discussion |  |
|  | | | |
| 25 | **Industry Regulation and Enforcement Panel** (Alternate option: presentation of KY DMR Litigation w/ guest panel) | Guest Speakers |  |
| 26 | **Adaptation to Climate Change:**  Implications for regulators, industry and citizens. | Lecture/Class Discussion |  |
|  | | | |
| 27 | **Final Project Presentations** | Final Project Presentations |  |
| 28 | **Final Project Presentations & Course Evaluation** | Final Project Presentations | (Final project write-up will be due on exam day) |

**Description of Projects and Assignments[[4]](#footnote-4):**

1. **Daily Outlines:** Students will submit a 1-page outline of the reading assignment. This is to ensure that students keep up with reading and are prepared for class discussion. Outlines must be submitted electronically, no later than the start of class.
2. **Class Discussion Exercise:** Students will be given a hypothetical “commons” scenario and asked to break into groups to brainstorm possible solutions for regulating their commons. Students will consider the various resources of the commons, the interests of those who use or are impacted by the use of the commons, and the consequences of their regulatory solution – both positive and negative. Groups will then present their solutions to the class for discussion.
3. **Statute Presentations:** Students will each be assigned an environmental statute (e.g. Clean Water Act, CERCLA, etc.) and will give a five-minute presentation on the purpose of the statute and how it is implemented. Presentations may be assigned as a group project depending upon class size.
4. **Public Comment Exercise:** Students will be assigned various roles (e.g. industry owner/operator, local government, private citizen, etc.). Students will present public comments on a newly proposed hypothetical regulation from the point of view of the person or group they represent.
5. **Documentary Film Reaction Paper:** Students will write a short (2-4 page) paper discussing a documentary film (TBD) and how it relates to regulatory and enforcement issues discussed in class.
6. **Debate Exercise:** Students will prepare a 1-2 page summary of arguments on an assigned debate topic.
7. **Preliminary Project Presentations:** Students will prepare and present history and background information on the enforcement action for their final project. (See **(9)**, below.)
8. **Final Project Presentations:** Students will give a 15-20 minute presentation of their final project.
9. **Final Project Assignment:** Students will choose an industry or regulatory agency and an area of environmental or health and safety regulation that is interesting to them. Students will work with the professor to identify a real world example of enforcement within that industry and area of law. Students will research, summarize, and prepare a preliminary presentation of the history and background for: 1) the company/agency; 2) the applicable laws and regulations; 3) the nature of the illegal or noncompliant conduct at issue; and 4) the factual scenario and context leading up to the enforcement action. Students will then evaluate the actions of the company/agency and the outcome of enforcement, including but not limited to analysis of the following:
   1. Who was impacted or harmed by the conduct requiring enforcement
   2. Could the situation have been prevented and, if so, how?
   3. What was the outcome of enforcement and was it effective? Why or Why not?[[5]](#footnote-5)
   4. Was the enforcement fair to the affected parties?
   5. What could be done to improve the outcome, prevent the need for future enforcement action, etc.?

**Statement on Student Engagement with Courses:** In its mission statement, Appalachian State University aims at “providing undergraduate students a rigorous liberal education that emphasizes transferable skills and preparation for professional careers” as well as “maintaining a faculty whose members serve as excellent teachers and scholarly mentors for their students.” Such rigor means that the foremost activity of Appalachian students is an intense engagement with their courses. In practical terms, students should expect to spend two to three hours of studying for every hour of class time. Hence, a fifteen-hour academic load might reasonably require between 30 and 45 hours per week of out-of-class work.

**The Academic Integrity Code:** As a community of learners at Appalachian State University, our integrity relies on practices of honesty, fairness, and responsibility. Academic dishonesty detracts from the value of your education and calls the validity of the degree you may receive into question. Any form of dishonesty, including but not limited to lying, cheating, or stealing in any form, will not be tolerated. Any suspected instances of academic dishonesty will receive immediate action pursuant to the provisions of the Academic Integrity Code, which may be viewed on the Office of Student Conduct website: [www.studentconduct.appstate.edu](http://www.studentconduct.appstate.edu).

**Disability Services:** Appalachian State University is committed to making reasonable accommodations for individuals with documented qualifying disabilities in accordance with the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. If you have a disability and may need reasonable accommodations in order to have equal access to the University’s courses, programs and activities, please contact the Office of Disability Services (828.262.3056 or [www.ods.appstate.edu](http://www.ods.appstate.edu/" \o "www.ods.appstate.edu" \t "_blank)). Once registration is complete, individuals will meet with ODS staff to discuss eligibility and appropriate accommodations.

1. *See Infra*, Description of Projects and Assignments. [↑](#footnote-ref-1)
2. Selection of readings is in progress. [↑](#footnote-ref-2)
3. Time permitting. [↑](#footnote-ref-3)
4. More detailed descriptions of projects and assignments will be provided throughout the semester. [↑](#footnote-ref-4)
5. Students may wish to compare two different enforcement outcomes within the same industry or agency. [↑](#footnote-ref-5)