THE ORIGINS OF ENVIRONMENTAL LAW:
REGULATION AND EVOLUTION

SYLLABUS

Date & Time
Wednesdays, 11:00am-12:50pm

Location
To be determined

Instructor Information
Instructor: Thomas C. Jorling
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Office Hours: To be determined, and by appointment

Co-Instructor: Leon Billings
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Office Hours: To be determined, and by appointment

Prerequisite: None.

Course Description
This unique course will focus on the process that led to the seminal federal environmental laws of the 1970s and the political and social dynamics and setting of the era. Over the course of a single decade, Congress enacted a series of environmental laws that created the direction and character of federal environmental laws, not to mention a sea change in the relationship between the Congress, the Courts and the Executive branch.

The course will be taught by Leon G. Billings and Thomas Cash Jorling, the two senior majority and minority staff members who led the Senate environment subcommittee which originated and developed the legislation, supplemented with visiting lectures from other staff who were engaged in that process at that time.

This course will explicate the legislative processes that produced the foundational environmental laws of the 1970’s. The primary focus will be the Water Quality Improvement Act (WQIA), Clean Air Act of 1970 (CAA), the Clean Water Act of 1972 (CWA), Resource Conservation and Recovery Act of 1976 (RCRA), and the Superfund Act of 1980 with additional attention given to the relationship of these laws to the National Environmental Policy Act of 1969. The course will examine the dynamics of the legislative process through the people, the politics and policies, and the key issues that were resolved in the legislation. In order to illustrate the essence of the legislative process the issues covered will include, among others; Constitutional reach, goals and objectives, technology standards versus ambient standards, extent of administrative discretion, deadlines, enforceability, burden of proof, public participation, and judicial review.

Environmental law shapes how environments and organizations are managed and sustainability practitioners must be able to analyze public policy and its effects on what they are able to do. By understanding the history and the legislative and political processes that led to key environmental policies, this course strengthens students’ ability to react to future policy developments as they emerge, and potentially engage as key stakeholders in the process.
Course Objectives
The course’s fundamental objective is to provide students with an appreciation of the legislative process both as a formal, structured process, as manifested in development of precedential environmental law, as well as the human dynamic in a multidimensional process. The course will conclude with a comparison of the legislative process during this “environmental era” with the process today which can be fairly characterized as a “dysfunctional era.” By the end of this course, students will:

- Demonstrate a working knowledge of the processes through which rules and regulations targeted toward sustainability are created.
- Analyze legislative processes and procedures in order to understand how the policy process impacts sustainability managers in the public and private sectors.
- Demonstrate a clear understanding of the human dynamic in the multidimensional process of formulation and passing of legislation relating to complex environmental problems.
- Analyze the impacts politics on, and the interplay of, different stakeholders in the environmental legislative process.
- Synthesize, apply and communicate sustainability knowledge to solve environmental problems.

Method of Instruction
Class time will combine lectures, class discussion and presentations from an occasional guest speaker. Assignments will reflect topics covered in the class lectures and discussions. The course is open to both graduate and undergraduate students.

Course Topics
The course begins with an overview of the course objectives, and an introduction to environmental law. In subsequent weeks, the course covers a series of the key dimensions of the legislative process that led to the landmark environmental laws of the 1970s. The course concludes with a lecture that compares the Congress that passed these laws to the current legislatively in-active Congress and notes the influence of fundraising and campaign finance on today’s state in Washington.

- Week 1: Introduction to the Course and Early Environmental Legislation, Pre-1969
- Week 2: The Structure and Role of Congress in Environmental Policy
- Week 3: The Partisan, Geographic and Economic Political Context
- Week 4: The Clean Air Act: Who, What, Why?
- Week 5: The Clean Air Act (Continued): The Floor Debate
- Week 6: The Solid Waste Disposal Act and RCRA
- Week 7: The Federal Water Pollution Control Act
- Week 8: The Clean Water Act: Conference with the House Public Works Committee
- Week 9: The Nixon Veto and the Override
- Week 10: Mid-Course Correction: The Clean Air Act and Auto Standards
- Week 11: Mid-Course Correction: The National Commission on Water Quality
- Week 12: The Final Act: Superfund and the End of an Era
- Week 13: Congress Today: The Role of Campaign Finance and Fund raising

Required Reading
In preparation for the class, students will be expected to have studied the biographies of identified Members of the Senate Subcommittee on Environmental Pollution (Muskie, Randolph, Bayh, Eagleton, Spong, Montoya, Moss, Bentsen, Tunney, Jordan, and Cooper, Boggs, Baker, Dole, Gurney, and Buckley); the five Senior Members of the House Interstate and Foreign Commerce Committee in 1970
and in 1975-77, the top four Senior Members of that Committee’s Subcommittee on Public Health in those same years, the ten Senior Members of the House Committee on Public Works and the four Senior Members of that Committee’s Subcommittee on Water Resources in the years 1969-72 and 1975-77.

In addition, students will be expected to be familiar with readings available on Courseworks including two law review articles by Prof. Richard Lazarus, an article by Senator Edmund S. Muskie which appeared in The Environmental Forum, and a speech by Senator Howard H. Baker delivered at the inauguration of the Baker Institute at University of Tennessee.

Students may also want to review and become familiar with: the House and Senate Committee hearing record on both the Clean Air Act and the Clean Water Act, the Senate and the House debates on the 1970 Clean Air Act and Conference agreement and the 1972 Federal Water Pollution Control Act, the Conference agreement and the debate on the Senate and House override of the veto of that legislation.

Many readings are one-of-a-kind materials (i.e. transcripts of executive sessions), and will be held on reserve at Leman Library. Additional readings may be assigned, and links or citations will be available on Courseworks. A comprehensive list of hearings, markup sessions, memos to Senators, appropriate statements and speeches, newspapers, authors and sources will be provided in advance of each session. For many sessions, students will be asked to do light research on topics related to the week’s lecture topic. Students will be expected to contribute to the discussion based upon this background research. These will be in addition to any specific required readings, and are expected to supplement the lecture.

Additional reading assignments will be assigned and posted to Courseworks. Students are expected to check Courseworks at least once per week.

**Resources**

Courseworks will be used to distribute reading materials, lecture slides, and to submit assignments. Any readings whose full-text is unavailable through the links in Courseworks will be placed on reserve at the Library.

**Course Requirements**

Attendance at each class is required and students will be expected to have done the readings and participate in class discussions asking relevant questions and providing thoughtful commentary. Students will be assigned topics on which to prepare short memos and one longer paper.

During the course of the semester students will be asked to prepare three memoranda, no longer than two pages, the purpose of which will be to either persuade “their” Senator to support or to oppose a position on a controversial issue they have selected or to support a position they determine their Senator has already taken. Each student will be required to complete a term paper discussing either an assigned issue in controversy or a self-selected issue in controversy with the approval of the instructors.

The subjects may include: Auto Emissions: Preemption vs. State regulation; Interstate Water Pollution Compacts vs. Direct federal regulation of municipal and industrial point source discharges; Zero discharges vs. “Fishable-Swimmable, the National Water Quality Standard; Air quality premised on public health protection vs. economic and technical feasibility; negligence vs. strict joint and several liability; toxic prohibition vs. technology based emission limits; mandatory actions v. discretionary authority; only government enforcement v. citizen suits; emission, effluent, and waste disposal penalties; market mechanisms v. command and control; preservation of state authority to establish more stringent regulations vs. state legislation prohibiting regulations more stringent than Federal rules. Others may be added as the course develops.
Final paper topics may include: State Sovereignty vs. Federal intervention (NPDES) (SPDES); National legislation vs. international agreements (Oil and Vessel pollution); NSPS vs. National Emission Standards; National climate change legislation v. International agreements (national sovereignty vs. international adjudication); Waters of the United States: how geographically far can the federal reach extend i.e. prairie pot holes, intermittent streams and unconnected waters (Lake Tulare); Enforceability of market based approaches to non-point source water pollution and area sources of air pollution; History and success of air and water pollution compacts between the states; Federalism issues related to water quality authority and water quantity rights; the politics and regulatory feasibility of Sec. 112 of the Clean Air Act; emission limits vs. performance standards and the adoption of the Title V permit program of the 1990 Amendments. Others may be added as the course develops.

Term paper decisions will be made by session eight. Papers will be of sufficient length to address the subject matter selected or assigned. Papers are to be submitted by session 13.

The final grade will be determined as follows:

- Individual memos: 60%
- End of term paper: 30%
- Class participation: 10%

**Individual Memos (60%)**
Three 2-page action memos will account for 60% of the course grade, 20% for each of the memos. Memo assignments and expectations will be discussed in class at least two weeks in advance of the due date, and will be based on lectures, readings, and student research.

- Memo #1: Due by start of class session #3: “Memo to Senator” on the scientific basis for federal action on either or air pollution; recommend action and explain why it is needed.
- Memo #2: Due by start of class session #6: two page “Memo to Senator” on the influence of the growing “environment” movement on the legislative process, and how its effect impacted other stakeholders including the response by lobbyists.
- Memo #3: Due by start of class session #9: “Memo to Senator” on political and environmental implications of voting to extend deadlines.

**Final Paper (30%)**
An end of term paper will serve as the course’s final exam. The paper will be no longer than 10 pages in length. Instructors will present final exam themes and research questions no later than Session 7, at the mid-point of the semester. Students will select specific topics of their choosing in consultation with the instructors.

**Attendance and Participation (10%)**
Attendance is mandatory for each class session. If a student must miss class for any reason, the student must notify the instructors by email before the start of the class session. One point from the student’s participation grade will be deducted for each unexcused absence. There will be at least 30 minutes of discussion each class to discuss the lecture, readings, and responses to the previous week’s lecture.
Evaluation and Grading
Students will be evaluated on all of the criteria below for all written assignments:

- Explaining environmental policy concepts and demonstrating critical thinking: In written assignments, students must indicate their understanding and analysis of the concepts related to the student’s topic of choice.
- Content and Sources: Students are expected to draw from insights in the weekly lectures, as well as from a variety of published sources, to inform their analysis of environmental policy and politics and Congressional operations. All sources shall be properly cited in the text and provide a bibliography using MLA format. Please use only primary or secondary resources. For more information about primary and secondary resources, see: http://www.lib.berkeley.edu/instruct/guides/primarysources.html.
- Quality of written assignments: students are expected to produce concise, well-organized, and persuasive memos, in the correct format, that display their facility with the concepts of the weekly lectures and reading assignments.
- Memos should be no more than 2 pages in length and will be graded out of 100 points.
- Final exam should be no more than 10 pages in length and will be graded out of 100 points using the following rubric: Spelling, Grammar, and Writing Style: 15 points, Adherence to Format Guidelines:15 points, Content: 60 points total.

Grading Policies
The following identifies how points awarded to individual assignments translate into letter grades for the course:

A  93-100
A-  90-92
B+  87-89
B   84-86
B-  80-83
C+  77-79
C   74-76
C-  70-73
D   66-69
F   65 or lower

Policies and Expectations
Attendance
Students are expected to arrive on time, attend all classes, and to stay until the end of class unless they have notified the instructor at the beginning of the session that they will be leaving early. Each unexcused absence will affect a student’s grade in the class.

Late Assignment Policy
Assignments are due on the dates/times identified. One letter grade will be deducted from any assignment submitted after the due date/time. No assignment will be accepted after the deadline for submitting final grades.

Incompletes
As outlined in the School’s grading and academic starts policy, “A grade of ‘I’ (incomplete) is a temporary grade indicating failure to complete assigned work. The mark is given only upon the request of the student and at the discretion of the instructor. The student and faculty member must sign a completed
'Request for Grade of Incomplete Form’ before the final class session. The ‘I’ must be removed within one year after the end of the semester in which the student received the grade. Students seeking an extension of this time limit must have the approval of the instructor and successfully petition of the director of their program. If no petition is made, or if the petition is unsuccessful, the grade is changed to an N-Permanent Incomplete- which remains on the student’s permanent record.

**Academic Integrity**
The School of Continuing Education does not tolerate cheating and/or plagiarism in any form. Those students who violate the Code of Academic and Professional Conduct will be subject to the Dean’s Disciplinary Procedures. The Code of Academic and Professional Conduct can be viewed online: [http://ce.columbia.edu/node/217](http://ce.columbia.edu/node/217)

Please familiarize yourself with the proper methods of citation and attribution. The School provides some useful resources online; we strongly encourage you to familiarize yourself with these various styles before conducting your research:
[http://library.columbia.edu/help/howto/endnote.html](http://library.columbia.edu/help/howto/endnote.html)

Violations of the Code of Academic and Professional Conduct will be reported to the Associate Dean for Student Affairs.

**Accessibility Statement**
Columbia is committed to providing equal access to qualified students with documented disabilities. A student’s disability status and reasonable accommodations are individually determined based upon disability documentation and related information gathered through the intake process. For more information regarding this service, please visit the University’s Health Services website:
[http://health.columbia.edu/services/ods/support](http://health.columbia.edu/services/ods/support)

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**Course Schedule**

**SESSION 1: Sept. 03**
As it is necessary to understand the playing field in 1969-70, we will first review the evolution of existing pollution law, circa 1969: water pollution legislation from 1948 through 1966 and air pollution legislation from 1955 through 1967 will be summarized and discussed. Early environmental federalism will be explored. Limitations on federal intervention and statutory measures of performance such as “economic and technical feasibility” will be discussed as will the enforcement mechanisms available pre-1968. The role of Earth Day, the Vietnam War protests and other external factors will be evaluated


Research: What was the condition of air or water quality in one or more specific areas or bodies of water of your choosing?; what was the condition of air quality in specific areas or generally? (i.e. for waters: Lake Erie; Lake Tahoe; East coast beaches; air: Donora, PA; New York City, NY; Los Angeles, CA; Birmingham, AL)
SESSION 2: Sept. 10
With an understanding of past legislation and the political climate, it will be useful to understand the structure and personalities of the Members and Staff of the Senate subcommittee; Committee jurisdiction and how it is derived; how Senate committee business was conducted; the role of lobbyists, administration organization and officials and staff, and the media will be presented.

Research: Find early journalism coverage of Water Quality Improvement Act (WQIA) and Clean Air Act (CAA). Be prepared to discuss how print media covered this legislation; Gladwin Hill, Spencer Rich, Jim Bishop, E.W. Kenworthy, John Averill. Identify pre-1968 politically important scientific or other commentary on pollution or contamination that may have influenced Congress, i.e. Rachel Carson, Barry Commoner.

SESSION 3: Sept. 17
Having provided an understanding of the key players and the role of external influences, we will focus on the partisan, geographic and economic political context. We will discuss the politics of the Senate Committees with the focus on National Environmental Policy Act (NEPA); the role Muskie’s vice presidential candidacy and Presidential candidacy; the arrival of Jorling; the WQIA and its evolution; the role of oil spills; the role of the House Public Works Committee and the deference to committee expertise.


Research: Relationship of American Petroleum Institute, insurers and oil company lobbyists with members of Congress and the Executive Branch;

Assignment Due: Preparation of two page “Memo to Senator” on the scientific basis for federal action on either or air pollution; recommend action and explain why it is needed.

SESSION 4: Sept. 24
The Clean Air Act: Who, what, why? We will discuss: air pollution episodes; key players (Baker, Boggs, Cooper, Randolph, Bayh, Eagleton, Spong, Dole, Gurney); key influences; evolution of specific provisions; the August Surprise; discretion vs. mandatory action; deadlines, statutory standards, emission limits, NSPS, public health premise; citizen suits and judicial review; role of lobbyists; revelation and reaction.


Research: Nixon’s Environmental Message; the backgrounds of Nixon’s environmental appointments at EPA, CEQ, and Interior; Media commentary on pollution politics;

SESSION 5: Oct. 01
We will continue our discussion of the Clean Air Act. We will discuss the floor debate (Griffin and Hruska); the unanimous vote; the conference with the House and the make-up of the House conferees; the role of the media (Jack Anderson) and the Administration’s attempt to scuttle the bill. We will discuss the role of House staff (Kurt Borschardt) and House Legislative Counsel (noting the absence of a role for Senate Legislative Counsel).
Reading: Harvard Case Study on the Clean Air Act

Research: Evolution of automobile emission control standards; nature and availability of monitored data on the quality air and sources of air pollution and availability of monitoring technology.

SESSION 6: Oct. 08
We will discuss the Solid Waste Disposal Act (as step sister of CAA) and the Resource Conservation and Recovery Act of 1976 (RCRA); the establishment of jurisdiction; open dumps; and national policy to move from disposal to recycle, reuse, recovery and conservation. Creation of EPA.

Readings: Selected readings from the House and Senate hearings, reports and debate on SDWA, 1965 and RCRA, 1970; hearings and reports on reorganization plan to create the Environmental Protection Agency.

Research: How was household, industrial, and municipal waste dealt with prior to 1970?; what rules, federal, state and local, applied to disposal of wastes?

Assignment: Preparation of two page “Memo to Senator” on the influence of the growing “environment” movement on the legislative process, and how its effect impacted other stakeholders including the response by lobbyists.

SESSION 7: Oct. 15
We will introduce the Federal Water Pollution Control Act of 1972, and discuss the politics of water pollution. We will discuss the structure of the Act; Sec. 10 and Sec. 13 of the Refuse Act of 1899; the Council on Environmental Quality initiative on national permit program; the no discharge premise; the shift to National minimum technology based effluent standards, the influence of and need for Federal funds for waste treatment and the role of Republican Governors, Rockefeller, Evans, Sargent, and Agnew and Democrat Curtis of Maine; the relationship between funding and regulation; the adoption of “CAA boiler plate; the degree of investigation and negotiation; the battle over a “national water quality standard” with Tunney; and the role of “newcomer” James Buckley; the Senate debate and unanimous approval.

Readings: Unlikely Environmentalists, Milazzo, 2006, University of Kansas Press.

Research: The role and relationship of the Corps of Army Engineers on environmental issues circa 1963-1972.

SESSION 8: Oct. 22
Today we will explore the Conference with the House Public Works Committee: how it began and the politics and personalities of the House Committee and role of staff; the clandestine meetings with Blatnik; the role of acting Chair Bob Jones; the House hearings and Rockefeller’s epiphany; Conference with the House, working from the Senate Bill, the role of major federal financial assistance to construct municipal waste treatment plants, the changes in boilerplate; the final negotiation: “waters of the United States” and the Tahoe provision as an insight in to policy v. personality.

Readings: Selected readings from House and Senate hearings, reports, and the conference committee reports and debates on the Clean Water Act.
Research: What analytic techniques were used to establish pollution control performance requirements prior to 1972 (i.e. benefit-cost analysis, cost effective analysis, availability of technology; assimilative capacity)?

SESSION 9: Oct. 29
At this session, we will discuss the Nixon Veto and the override; the dramatic change in progressive policy progress; Ruckelshaus and the EPA on implementation of the CAA and the CWA; impoundment and litigation; and auto emission deadline extension.

Readings: Confirmation hearings on EPA Administrator William D. Ruckelshaus, Nixon clean water veto message and press coverage thereon, as well as press coverage on auto emission deadline extension and clean water funding impoundment.

Research: What was the state of auto emission technology around 1970 and what competing alternative technologies were being advocated?

Assignment Due: Preparation of two page “Memo to Senator” on political and environmental implications of voting to extend deadlines.

SESSION 10: Nov. 05
Mid-course correction to the Clean Air Act: We will focus on auto standards and “prevention of significant deterioration.” We will discuss the dynamic of the change politics of the environment, the role of Dingell and Breaux and change in House rules, the role of lobbyists in an open decision making process; the role of campaign finance and the intense politics involving United Automobile Workers, the auto companies, the oil companies and the utilities.

Readings: Sierra Club v. EPA (Prevention of Significant Deterioration); selected reading of Clean Air Act hearings, reports and legislation 1975-77.

Research: Role of the White House and the Administration with regard to the attempts to amend the CAA 1975-77.

SESSION 11: Nov. 12
Mid-course correction to the Clean Water Act: We will discuss modifications of the CWA; the National Commission on Water Quality; the role of Vice President Rockefeller and interaction with Muskie and Buckley. We’ll discuss the 1977 amendments, codifying the Flannery decision.

Readings: Selected readings from hearings, reports and debates on CWA, 1975-77; Flannery consent decree.

Research: Role of public interest organizations, litigation and personalities in the policy results, 1975-77.
SESSION 12: Nov. 19
The final Act: Superfund and the end of an era.

Readings: Selected reading from hearings, debate and legislative action in the House and Senate on Superfund legislation of 1980 and the same for CWA amendments in 1977; media coverage of hazardous waste sites in the period around 1978.


SESSION 13: Dec. 03
At our final session we will have a comparative discussion about Congress and committees today and the role of campaign finance and fund raising.

Readings: Mann-Ornstein, 2012 It’s Even Worse Than It Looks.


Assignment: Submit final paper
APPENDIX A

School Policies

Copyright Policy
Please note -- Due to copyright restrictions, online access to this material is limited to instructors and students currently registered for this course. Please be advised that by clicking the link to the electronic materials in this course, you have read and accept the following:

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted materials. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.