REVISED Syllabus -Federal Environmental Litigation Seminar – LLM -  
CRN 29128 Course / LAWG 3007  
Tuesdays 3:30 pm – 5:30 pm  
August 29, 2016 – December 3, 2016

Class 1 – Aug 30  
Environmental Litigation  
Substantive Statutes – Introduction and lecture on role of the courts in reviewing agency action under the Administrative Procedure Act and in enforcing substantive environmental laws under:  
- Toxic Substances Control Act  
- Clean Water Act  
- Clean Air Act  
- Resource Conservation and Recovery Act  
- Endangered Species Act and Historic Preservation Act  
- National Environmental Policy Act (NEPA)

Class 2 – Sept 6  
Environmental Litigation  
Procedure and Players:  
- Role of Regulatory Agencies  
- Role of Department of Justice  
- Role of States v. Federal v. the Public (Commenters and Citizen Suits)  
- Civil v. Criminal Enforcement

Homework: Read: Marsh v. Oregon Natural Resources Council, et al., 490 U.S. 360 (1989); Model Complaint for Declaratory, Mandamus and Injunctive Relief, and Factual Background for Class 2. (All are attached).

In-Class Exercise: Having been retained by a citizen group, students will draft a complaint challenging the government’s compliance with NEPA based on Factual Background.  
At the conclusion of this in-class exercise students will submit their final complaints for review and discussion at the beginning of the next class.

Class 3 – Sept 13  
Standing, Exhaustion, Ripeness Challenges to Agency Action under the APA: This class will examine in detail the prerequisites for filing an action challenging an agency decision and the importance of developing the factual record to support these requirements. The purpose and elements of a motion to dismiss under Rule 12(b)(1) and (6) will be reviewed. The class will also discuss how to draft a motion to dismiss.

In-Class Exercise: Review the complaint and motion and briefs filed in the government’s motion to dismiss for lack of standing and jurisdiction in Texas Bio- & Agro-Defense Consortium v. United States, No. 09-255C. Oral argument will focus on the question of whether Texas Bio-Agro-Defense Consortium has standing to make a NEPA challenge assuming the Court of Federal Claims has jurisdiction over NEPA claims.

Class 4 – Sept 20 Argument on a Motion to Dismiss at the U.S. Court of Federal Claims: This class will be the first mock oral argument on the government’s motion to dismiss based on the briefs that were used in Class 3. The professors will review with the students prior to argument-courtroom etiquette and what to expect during an argument.

Oral Argument:

The United States Court of Federal Claims
Howard T. Markey National Courts Building
717 Madison Place N.W., Washington, D.C. 20005

Courtroom Number will be emailed to you on the day of the argument.

Class 5 – Sept 27 Challenging Agency rulemaking
This class will discuss petitions for review

In class exercise: Briefs that will be provided for use in the following week’s oral argument on a motion to dismiss a petition for review for lack of subject matter jurisdiction.

PRIOR TO ARGUMENT- EACH STUDENT MUST SUBMIT BY 8 am Tuesday September 26—to each professor by email his oral argument outline.

Class 6 -- Oct 4 Oral Argument on Motion to Dismiss -- Petition for Review for Lack of Subject Matter Jurisdiction.

Courtroom assignment will be mailed in advance of the class.

Tuesday, Oct 11 No Class  (Columbus Day Holiday - Monday classes meet on Tuesday)
Class 7 – Oct 18

Preserving the Status Quo with Temporary Restraining Orders and Preliminary Injunctions: This class will examine the importance of securing early court intervention to ensure that the agency action does not go forward. The elements for securing a Temporary Restraining Order ("TRO") or Preliminary Injunction ("PI") will be reviewed. The class will also review drafting a Motion for TRO or PI.


In-Class Exercise: Reviewing briefs, affidavits and prepare an outline for your oral argument on a preliminary injunction motion to take place at the USCFC in Class 8.

PRIOR TO THE OCTOBER 25 argument, each student will email to each professor an outline of his oral argument --

Class 8 – Oct 25

Argument on Motion for Preliminary Injunction at the U.S. Court of Federal Claims.

Oral Arguments at the U.S. Court of Federal Claims. The courtroom number will be emailed on the day of the argument.

Class 9 – Nov 1

Everything You Need to Know About the Administrative Record: This class will explore the issues surrounding the creation, presentation, and challenges to the completeness of administrative records. Students also will learn about the role of the Freedom of Information Act in challenging agency actions.


Class 10 – Nov 8

Civil and Criminal Enforcement Lecture

Class 11 – Nov 15

Superfund Litigation
Lecture --- The students will also be provided with the Administrative Record that will serve as the basis for the summary judgment brief that will serve as the class final.

Class 12 – Nov 22  Preparing for Summary Judgment on issues of liability under Superfund
How to prepare or defend a motion for summary judgment on liability.

Outlines for your final argument must be emailed to each professor by 8 am Nov. 29 before the Class 13 Mock Oral Argument.

Class 13 – Nov 29  Oral Argument -Superfund Litigation –
The courtroom number will be emailed on the day of the argument.

December 16, 2016  Final Summary Judgment Brief Due – This will serve as your Class ‘final” and must be submitted to both professors and GULC.

Grading Policy:  50% Class Participation and Oral Arguments
50% oral argument outlines and final brief