

Vermont Law and Graduate School
Summer 2023 – Term Two

Professor Barry E. Hill

(Tuesday, June 20 through Thursday, June 22)(1:00 – 4:30 pm)

(Monday, June 26 through Wednesday, June 28)(1:00 – 4:30 pm)

(Thursday, June 29)(1:00 – 4:00 pm)

SYLLABUS

Course Title: Environmental Justice

Course Description: Environmental justice activists and advocates argue that who you are and where you live should not dictate the conditions under which you live and how you will die. The nascent Environmental Justice Movement is aimed at avoiding, minimizing, or mitigating disproportionately high and adverse human health and environmental impacts, including social and economic impacts, on minority and/or low-income communities, and for those communities to be engaged meaningfully in the environmental regulatory agency's decision-making processes.

This course explores the complex dynamic of environmental justice concerns which involves environmental, social, economic, public health, and political problems. The course discussion regarding the concept of environmental justice involves a comprehensive examination of US environmental laws, caselaw, history, political science, and environmental policy.

This course examines this environmental and public health problem and explores the growth of the nascent Environmental Justice Movement. It analyzes the complex mixture of environmental laws and civil rights legal theories adopted in environmental justice litigation. It examines, among other things, EPA's Title VI administrative complaint, investigation, and resolution processes; and the quest by US citizens living in Louisiana's Cancer Alley for a human right to a safe, clean, healthful, and sustainable environment in an international human rights forum.

This course examines the idea of an environmental rights amendment in the bill of rights sections of state constitutions as a way to ensure a safe, clean, healthful, and sustainable environment for all Americans.

Course Materials: This course will be organized around a law review article entitled, "THE SEVEN DEGREES OF RELEVANCE: WHY SHOULD REAL-WORLD ENVIRONMENTAL ATTORNEYS CARE NOW ABOUT SUSTAINABLE DEVELOPMENT POLICY" by Professor J.B. Ruhl (8 Duke Env'tl. L. & Pol'y F. 273 (1998)).

The textbook/handbook that will be used is Professor Hill's: ENVIRONMENTAL JUSTICE: LEGAL THEORY AND PRACTICE (5th edition) (published by the Environmental Law Institute) (October 2022).

Course requirement

Class participation and attendance are an absolute must and will be weighed in the final grade. Students are required to read the assigned material prior to every class and must be prepared

to discuss the readings in class. Please pay particular attention to the questions posed after the assigned material.

There will be a take home exam. Class ends on Thursday, June 20th. The take home exam opens on Friday, June 30th. The take home exam closes on Sunday, July 9th. Grading begins on Monday, July 10th. Final grades will be submitted on Thursday, July 20th (Three weeks after the end of class).

Course Readings:

MODULE 01 – INTRODUCTION

- Constitutional Environmentalism.
- textbook, “Introduction,” pp. 1-23.
- textbook, Chapter 1, “Prologue,” pp. 25-38.
- textbook, Chapter 2, “Environmental Rights Amendments,” pp. 84-108, and 119-124.

MODULE 02 - FIRST DEGREE: THE IDEA BECOMES WIDELY EXPRESSED THROUGH A GENERALLY ACCEPTED NORM STATEMENT

- Legislative Environmentalism.
- textbook, Chapter 5, article by Professor Ruhl, pp. 619-625.
- textbook, Chapter 1, “Defining the Problem,” pp. 181-209, and 247-254.
- Hill article, “Environmental Justice and the Transition from Fossil Fuels to Renewable Energy” TWEN

MODULE 03 - SECOND DEGREE: ADVOCATING THE OPPOSITE OF THE NORM IS NO LONGER A TENABLE POLICY POSITION

- Community Activism, Community Empowerment, and Community Empowerment Lawyering.
- textbook, Chapter 4, “Growth of the Movement: Organizing the Grassroots,” pp. 471-516.
- textbook, Chapter 8, “Addressing the Problem: The Private Bar and Corporate America,” article by Professor Quigley, pp. 1538-1553.

MODULE 04 - THIRD DEGREE: THE CHARGE OF ACTING CONTRARY TO THE NORM CAN NO LONGER BE LEFT UNADDRESSED

- Community Empowerment and Collaborative Problem-Solving.
- textbook, Chapter 4, “Growth of the Movement: Organizing the Grassroots,” pp. 522-533, 538-549, 556- 561, and 571-589.
- EPA’s Office of Environmental Justice Guidance Document, “EPA’s Environmental Justice Collaborative Problem-Solving Model.” Available at: <https://www.epa.gov/sites/default/files/2016-06/documents/cps-manual-12-27-06.pdf>

MODULE 05 - HUMAN RIGHT TO A CLEAN AND HEALTHY ENVIRONMENT

- Human Right to a Clean and Healthful Environment.
- textbook, Chapter 9, “Epilogue,” pp.1655-1663.
- textbook, Chapter 2, “Human Right to a Clean and Healthy Environment,” pp. 41-73, and 80-84.

MODULE 06 - FOURTH DEGREE: FAILURE TO PORTRAY AN ACTION AS CONSISTENT WITH THE NORM IS SEEN AS A SIGNIFICANT DEFICIENCY

- Environmental Justice Bills (Federal).
- textbook, Chapter 5, “Addressing the Problem: The Legislative Branches,” pp. 613-643.

MODULE 07 – ENVIRONMENTAL JUSTICE LEGISLATION (STATES)

- Environmental Justice Laws (states).
- textbook, Chapter 5, “Addressing the Problem: The Legislative Branches,” pp. 647-702.

MODULE 08 - FIFTH DEGREE: IMPORTANT GOVERNMENTAL AUTHORITIES ESTABLISH THE NORM AS AN EXPLICIT POLICY GOAL

- Environmental Justice Policy
- textbook, Chapter 6, “Addressing the Problem: The Executive Branches,” pp. 719-752, 756-779, and 820-848.

MODULE 09 - SIXTH DEGREE: ACTIONS ARE DENIED OR DELAYED NECESSARY AUTHORIZATION ON THE BASIS OF A PERCEIVED FAILURE TO FACILITATE THE NORM

- The Anti-Discriminatory Law Approach.
- textbook, Chapter 7, “Addressing the Problem: The Judicial Branches,” pp. 851-892, and 897-928.

MODULE 10 – TITLE VI ADMINISTRATIVE COMPLAINTS AND LITIGATION

- The Title VI Approach
- EPA Enforcement of Title VI Regulations.
- textbook, Chapter 7, “Addressing the Problem: The Judicial Branches,” pp. 953-990, and 1023-1029.

MODULE 11 – IMPLIED PRIVATE RIGHT-OF-ACTION

- Citizen Enforcement of EPA’s Title VI Regulations.
- textbook, Chapter 7, “Addressing the Problem: The Judicial Branches,” pp. 1041-1080.

MODULE 12 - SEVENTH DEGREE: THE NORM IS FULLY TRANSFORMED INTO LAW TO APPLY - MEASURABLE, RATIONALIZED, ROUTINE STANDARDS OF ENVIRONMENTAL EVALUATION, AUTHORIZATION, AND PERFORMANCE

- The Environmental Law, With A Twist Approach.
- Creative Use of Existing Environmental Laws.
- textbook, Chapter 7, “Addressing the Problem: The Judicial Branches,” pp. 1081-1114.

MODULE 13 – SEVENTH DEGREE: THE NORM IS FULLY TRANSFORMED INTO LAW TO APPLY - MEASURABLE, RATIONALIZED, ROUTINE STANDARDS OF ENVIRONMENTAL EVALUATION, AUTHORIZATION, AND PERFORMANCE

- Creative Use of Existing Environmental Laws (cont’d).
- textbook, Chapter 7, “Addressing the Problem: The Judicial Branches,” pp. 1139-1210.

MODULE 14 – SEVENTH DEGREE: THE NORM IS FULLY TRANSFORMED INTO LAW TO APPLY - MEASURABLE, RATIONALIZED, ROUTINE STANDARDS OF ENVIRONMENTAL EVALUATION, AUTHORIZATION, AND PERFORMANCE

- Creative Use of Existing Environmental Laws (cont’d).
- textbook, Chapter 7, “Addressing the Problem: The Judicial Branches,” pp. 1211–1246.

