

[FINAL VERSION – June 21, 2019]

ENVIRONMENTAL ENFORCEMENT AND COMPLIANCE

Instructor: Randolph L. Hill
Summer 2019, Term Three, July 8–18
9:00a.m.–12:00p.m.

This course is an introduction to the theory and practice of enforcement of the federal pollution control laws. The course will first discuss the basic regulatory structure of the pollution control laws and the administrative, civil judicial, and criminal enforcement tools available to federal and state regulators to ensure compliance with those laws. The course will then delve into the practice of civil enforcement, including methods for investigating and establishing potential violations, selection of the appropriate enforcement response, calculation of penalties, use of supplemental environmental projects or other innovative remedies, and practical issues arising in citizen suit enforcement. The course will also discuss key issues related to criminal enforcement, including establishment of the elements of the offense and considerations of mental state requirements and the burden of proof. Finally, the course will discuss alternatives to traditional command-and-control regulation and enforcement for gaining compliance with environmental standards.

Prerequisites: Environmental Law; Administrative Law may also be helpful.

Readings:

- 1) Mintz, et al., Environmental Enforcement, Carolina Academic Press 2007 [2018 paperback reprint edition], ISBN 978-1-5310-1030-0 (including 2012 Supplement, available on TWEN)
- 2) Anderson, et al., Environmental Law Practice 4th ed., Carolina Academic Press 2018, ISBN 978-1-53100-531-3
- 3) Supplemental Materials Available on TWEN for This Course

A couple of notes about the Anderson book:

- 1) Some of the textual material covers the same topics as Mintz. These are noted on the syllabus as “recommended.” Read these if you want a different perspective. Material that is unique to Anderson is listed as “required.”
- 2) There are several problems and exercises in the book. Except for Exercises 2.1-2.3, you need not study them in detail.

Evaluation: There will be an take-home final examination beginning on Thursday, July 18th, and will be due on Sunday, July 21st at 6:00pm Eastern time. The exam will be blind-graded. More details and a sample exam will follow. Class participation is encouraged, but will not form a part of the final grade.

NOTE: Please read the first assignment prior to the first class.

July 8 -- Session 1: Introduction to Environmental Enforcement

- Required:
- a) Mintz 3-14, 31-37, 79-83, 111-112, 211-213
 - b) Anderson 3-6, 75-81
 - c) Shimshack, “Monitoring, Enforcement, & Environmental Compliance: Understanding Specific & General Deterrence” (EPA 2007) 1-18, 22-27 (skim only) [available in Course Materials on TWEN]
 - d) EPA Enforcement Results for FY 2018 (skim charts) [available in Course Materials on TWEN]
 - e) Grumbles, “Crooks and Nannies” [available in Course Materials on TWEN]
 - f) Inside EPA, “FY 19 Budget Seen as ‘Huge Blow’ to EPA Enforcement Programs” (Feb. 14, 2018) [available in Course Materials on TWEN]
- Recommended:
- a) Anderson 103-108
- Optional:
- a) Adler, “Bean Counting for a Better Earth,” *Regulation* (Spring 1998) 40 [link available in Course Materials on TWEN]

July 9 -- Session 2: Detecting Violations; Voluntary Disclosures

- Required:
- a) Mintz 39-67, 314-325
 - b) Anderson 97-102
- Recommended:
- a) Anderson 88-96 (omit Problems 2.2, 2.3, and 2.4), 143-150
- Optional:
- a) EPA, Statistics on EPA/State Air, Water, & Hazardous Waste Inspection and Enforcement (skim) [link available in Course Materials on TWEN]
 - b) EPA, Fact Sheet on Audit Policy (May 15, 2018) [available in Course Materials on TWEN]

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**July 10 -- Session 3: Government Enforcement Response to Detected
Violations; Administrative Enforcement**

- Required:
- a) Mintz 14-31, 83-94, 105-109
 - b) Mintz 2012 Supplement 6-10 [available in Course Materials on TWEN]
 - c) Anderson 108-114 (to end of subsection “c”)
 - d) Anderson 133-141 (Exercise 2), 365-378 [skim for now]
 - e) EPA, “Revised Policy Framework for State/EPA Enforcement Agreements (1986) 21-25 [available in Course Materials on TWEN]
 - f) Boston Globe, "Mass. is Enforcing Its Environmental Rules Less" (Mar. 8, 2017) [link available in Course Materials on TWEN]
- Recommended:
- a) Anderson 81-83, 116 (subsection “e”), 132-133 (to beginning of Exercise 2)
- Optional:
- a) EPA, “Interim OECA Guidance on Enhancing Regional-State Planning on Compliance Assurance Work in Authorized States” (Jan. 22, 2018) [available in Course Materials on TWEN]
 - b) EPA, “Language Regarding Judicial Review of Certain Administrative Enforcement Orders Following the Supreme Court Decision in *Sackett v. EPA*” (Mar. 21, 2013) [available in Course Materials on TWEN]
 - c) EPA, “Enforcement Response Policy for EPA’s 2013 Vessel General Permit” (Dec. 27, 2013) (skim) [available in Course Materials on TWEN]
 - d) Letter to Grumbles and Frosh, “Decreases in Environmental Enforcement” (May 5, 2016) [available in Course Materials on TWEN]

July 11 -- Session 4: Civil Judicial Enforcement Practice

- Readings:
- a) Mintz 113-125, 131-158 [omit Problem 4-1]
 - b) Mintz 2012 Supplement 11 [available in Course Materials on TWEN]
 - c) Anderson 121-123
 - d) Anderson 133-141 (reread) [We will go through Exercise 2.1 together in class]

Recommended: a) Anderson 114-116

Optional a) EPA, “Issuance of the 2015 Update to the 1998 U.S. Environmental Protection Agency Supplemental Environmental Projects Policy” (Mar. 10, 2015) [available in Course Materials on TWEN]
b) DOJ Memo, “Enforcement Principles and Priorities” (Mar. 12, 2018)
c) DOJ Memo, “Settlement Payments to Third Parties in ENRD Cases” (Jan. 9, 2018)

July 15 -- Session 5: Civil Judicial Enforcement Practice (Part 2); Civil Cleanup Enforcement

Readings: a) Anderson 133-141 (reread as necessary), 365-378 (reskim as necessary) [We will go through Exercises 2.2-2.3 together in class]
b) Mintz 159-171, 181-187, 194-201, 209-210
c) Mintz 2012 Supplement 18-23 [available in Course Materials on TWEN]

Recommended: a) Anderson 194-196, 200-201, 211, 217, 234

Optional: a) Anderson 236-245

July 16 -- Session 6: Criminal Enforcement

Readings: a) Mintz 211-256 [211-213 is a reread]
b) Mintz 2012 Supplement 29-33 [available in Course Materials on TWEN]
c) United States v. Boldt (1st Cir. 1991) [available in Course Materials on TWEN]
d) Transactional Records Access Clearinghouse, “EPA Criminal Prosecutions Down by Half in Last Five Years” (Oct. 24, 2016) [link available in Course Materials on TWEN]
e) Transactional Records Access Clearinghouse, “Federal Criminal Environmental Prosecutions Continue to Fall” (Feb. 1, 2018) [link available in Course Materials on TWEN]

- Optional:
- a) U.S. Courts, “Environmental Crime Tops List by Organizations” (Dec. 22, 2016) [link available in Course Materials on TWEN]
 - b) Inside EPA, “EPA Official Says CWA Jurisdiction Uncertainty Might Deter Enforcement” (June. 12, 2018) [available in Course Materials on TWEN]

July 17 -- Session 7: Citizen Suit Enforcement

- Readings:
- a) Mintz 257-303 [omit Problems 7-1 and 7-2]
 - b) Mintz 2012 Supplement 34-35 [available in Course Materials on TWEN]
 - c) Anderson 175-180 [omit Problem 3.5]
 - d) Friends of the Earth v. Laidlaw Env'tl Services 528 U.S. 167 (2000) (Kennedy, J., concurring) [available in Course Materials on TWEN]
 - e) Handout, “Citizen Suits After Gwaltney” [available in Course Materials on TWEN]

July 18 -- Session 8: Other Tools to Obtain Compliance; Wrap-up

- Readings:
- a) Mintz 305-314, 325-336, 352-363
 - b) Anderson 63-65
 - c) EPA, Slides on Next Generation Compliance (2012) [available in Course Materials on TWEN]
 - d) Environmental Governance Data Initiative, “A Sheep in the Closet” (May 2019) 41-50, 73-77 [available in course materials on TWEN] [rest of the report is optional]
 - e) Washington Post, Editorial (May 3, 2012) [link available in Course Materials on TWEN]
 - f) Boston Globe, Article on EPA Oil & Gas Enforcement (May 30, 2012) [link available in Course Materials on TWEN]