

ENVIRONMENTAL GOVERNANCE and the Private Sector (ENV5225)
(Class satisfies the MELP Environmental Economics core requirement)

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Textbook: None – materials will be posted on TWEN; I do suggest that printing out the materials for classroom discussion may be helpful. This class will meet in person subject to the Vermont Summer Session rules for classes during the current COVID situation. Any remote students will be connected to the live class and will be expected to observe and participate as if in person (to the extent possible). A couple of parts of the course will be asynchronous (to watch on your own) in place of some parts of class meetings.

This class first examines the economic underpinnings for environmental law and for the power of markets, including moral questions about markets and private governance.

It then examines the push for more private sector accountability and governance in environmental matters (such as ESG (“Environment, Social and Governance”) and CSR (“Corporate Social Responsibility”) policies) and how this relates to legal requirements in the private sector, particularly laws governing financial and risk disclosure.

The class also looks at private sector environmental governance. In particular, the class will examine the concept of business sustainability drivers and practice, private environmental governance, and what legal standards apply.

Students will examine 1) the economic and theoretical bases for environmental laws; 2) emerging corporate and private sector behavior in response to these laws, financial disclosure laws, and public opinion; and 3) private environmental governance.

Students will prepare

- 1) a short “in house” email memo (less than 2000 words) addressing a specific issue related to a publicly traded company and investor guidance and decisions [i.e. are the company’s environment/climate/social policy consistent with large investor concerns?], and
- 2) undertake a practical exercise in drafting either a private environmental governance agreement or system, a corporate financial disclosure statement relating to environmental or climate risks, or a corporate sustainability plan [all including explanations].

Grades will be based on both the in house email memo (40%) (due Monday, July 19 at beginning of class) and the draft and explanation of one of the above practical document drafting exercise (60%) (due on Sunday, July 25, by 5:00 P.M. E.D.T. by email to vflatt@central.uh.edu). ATTENDANCE and participation is expected. Grades may be adjusted up or down for exceptional participation or inadequate attendance or participation.

From VLS Faculty manual:

VLS has a recommended average grade of B in required courses, sectioned courses, and courses with an enrollment over 40.

Students may consult with each other on practical document drafting ideas.

Modifications to the Syllabus

The instructor reserves the right to make modifications to this syllabus as necessary over the course of the semester.

July 12

“How do we do good by the environment and make money?”

- I. Introduction to environmental information demand. Introduction to property, environmental law, environmental externalities, market based solutions and objections

Garrett Hardin, Tragedy of the Commons (excerpt)

Adam Sulkowski, Beyond Sustainability Reporting, 10 Univ. of St. Thomas L. J. 1060 (2013) [excerpt];

Michael Vandenberg, *Private Environmental Governance* Introduction (excerpted from 99 Cornell Law Review)

Greenfin – the Coming ESG Explosion

Rise of ESG Law Firms

(all on TWEN)

DISCUSSION OF CLASS, ASSIGNMENTS AND GRADING

July 13

- I. Using the Private Sector and Private Economic Behavior- Are Markets Moral?
- II. Commodity Trading Primer
- III. Problems with Private Sector Environmental Markets (standardizing the commodity; irreversible loss)

Assignments: E&E News, “Carbon Markets: The Epic Journey of a Modest Proposal,” May 2016;
 Victor B. Flatt, *Chapter on Environmental Markets*
 Pappas and Flatt. “The Costs of Commodification,” 9 U.C. Irvine L. Rev. 731 (2019) (Flatt edit);

(on TWEN)

July 14

- IV. Corporate Disclosure
- V. The Elements of a Corporate Sustainability Plan
 - a. CSR Best Practices

Assignment –

EP Next Generation Governance - Developing Position Statements on Sustainability Issues

Measuring Intangibles SAM’ CORPORATE SUSTAINABILITY ASSESSMENT METHODOLOGY

(Twen)

Have a printed or at least PDF of a Fortune 500 Corporate Sustainability Plan (your choice);

please review Sustainability Accounting Standards Board (SASB) web presence (seek to understand how organization works (SASB – Bloomberg; online materials; using your own search methods);

IN CLASS EXERCISE – Developing ESG Programs/ Sustainability Reports

DISCUSSION OF FIRST ASSIGNMENT

July 15 will be asynchronous for you to watch on your own and post questions

Watch first 2 hours of Sustainability Accounting Board Feb 26, 2020 meeting recording –

<https://www.youtube.com/watch?v=RBhTCQl7lXU>

Prepare 2 written questions, and email to me at vflatt@central.uh.edu by **Friday, July 16**

July 19

VI. Discussion of SASB meeting

Discuss SASB Materiality Assessment Grid at <http://materiality.sasb.org/>

VII. Financial Disclosure Requirements Related to the Environment (Practice and Critique)

Assignment –

Jill E. Fisch, *Making Sustainability Reporting Sustainable*, 107 Geo. L. J. 923 (2019) [excerpt];

Rissman and Kearny, *Rise of the Shadow ESG Regulators*, 49 Env'tl. L. Rep. News & Analysis 10155 (2019) [excerpt]

Big E Book of Sustainability Reporting Framework

(all on TWEN)

FIRST GRADED ASSIGNMENT DUE at beginning of class (can be emailed or turned in as hard copy)

July 20

1-2:30 PM

Financial Disclosure Requirements Continued – Materiality and Litigation

Discuss Second Assignment (with worksheet examples)

REST of CLASS time asynchronous

(video of Flatt, et al.) shareholder litigation and greenhouse gas issues

[https://uhlc.zoom.us/rec/play/n8JQ96bCeAdtsJcrbzET - J953P6OMQV2o7dZzLMA4Flo8yJG7mJxOCi-xEhMksxy9mdoRwcnliuPozw.6ZnePE9stuhY_bXB?continueMode=true&xzm_rtaid=AHsX-tMtR8ygtMT2O4ugJw.1614290658997.f17be7617b393ac07825e10665e7ec4a&xzm_rhtaid=937](https://uhlc.zoom.us/rec/play/n8JQ96bCeAdtsJcrbzET-J953P6OMQV2o7dZzLMA4Flo8yJG7mJxOCi-xEhMksxy9mdoRwcnliuPozw.6ZnePE9stuhY_bXB?continueMode=true&xzm_rtaid=AHsX-tMtR8ygtMT2O4ugJw.1614290658997.f17be7617b393ac07825e10665e7ec4a&xzm_rhtaid=937)

Please email 2 questions about the presentation to me by Weds., July 21 at Noon (vflatt@central.uh.edu)

Assignment:

July 21

Financial Disclosure Cont...

Hannah Vizcara, *Regulatory Activity and Legal Liabilities Affecting Management of Financial Climate Risk*, blog post, March 24, 2020

Print out text of proposed “Climate Change Financial Disclosure Act” and review (find this online...originally sponsored by Senator Elizabeth Warren) – also find one news article about it and be ready to discuss

Go online and find and download the official Securities and Exchange Commission (SEC) Reporting – Form 10-K

(on TWEN)

VIII. Additional Legal liability potential with ESG and sustainability

Assignment: - Latham and Watkins – ESG Litigation Roadmap
(on TWEN)

DISCUSSION OF SECOND ASSIGNMENT

July 22

The Private Sector as Primary Environmental Regulatory Body (Absence of Government Policy and Power of Investment and Consumers)
Also conflicting government policy

Assignment:

Michael Vandenberg, *Private Environmental Governance* (Flatt edit), 99 Cornell L. Rev. 129 (2013).

BlackRock Letter to CEOs at
<https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>

Flatt, *Climate Change Adaptation: The Impact of Law in the Private Sector*, (with Yee Huang), white paper from the Center for Law Environment Adaptation and Resources, and the Center for Progressive Reform, August 2012, available at
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2120083

[all on TWEN]

**SECOND ASSIGNMENT DUE by 5 PM EDT on Sunday, July 25, by email to
vflatt@central.uh.edu**