Course Title: Environmental Justice

Credits: 2

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 United States environmental law, 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 U.S. citizens living in Louisiana’s Cancer Alley for a human right to a safe, clean, healthy, 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 and the United States Constitution as a way to ensure a safe, clean, healthy, 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 Envtl. L. & Pol’y F. 273 (1998)).

The textbook that will be used is Professor Hill’s: ENVIRONMENTAL JUSTICE: LEGAL THEORY AND PRACTICE (fourth edition) (published by the Environmental Law Institute) (2018).

The articles by Professor Hill are available on TWEN for this class. The articles by other authors are available on the internet.

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.

Students are required to submit a well-researched typewritten final paper due no later than Sunday, July 10th. The paper cannot be more than 30 pages in length. Topics for the paper must be approved in advance. A list of 27 suggested topics is provided at the end of this syllabus. You must choose one of these suggested topics for your paper.

Course Readings:

**TOPIC – IS AN ENVIRONMENTAL RIGHTS AMENDMENT THE ANSWER?**

- Constitutional Environmentalism.
- Environmental Law Institute’s Panel Discussion: “The Constitutional Right to Save the Environment” (52 ELR 10007) (January 1, 2022) (TWEN)
- ProPublica’s Report, “Poison in the Air” Available at: https://www.propublica.org/article/toxmap-poison-in-the-air?utm_source=twitter&utm_medium=social#1157308

**TOPIC - FIRST DEGREE: THE IDEA BECOMES WIDELY EXPRESSED THROUGH A GENERALLY ACCEPTED NORM STATEMENT**

- Legislative Environmentalism.
- textbook, Chapter 3, article by Professor Ruhl, pp. 315-322.
- “Bending the Arc Toward Justice,” article by Professor Hill (The Environmental Forum (July/August 2020)). (TWEN)

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

- Community Activism and Community Empowerment, and Community Empowerment Lawyering.

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

- Community Empowerment and Collaborative Problem-Solving.  
  Available at: https://www.epa.gov/sites/default/files/2016-06/documents/cps-manual-12-27-06.pdf

TOPIC - HUMAN RIGHT TO A CLEAN AND HEALTHY ENVIRONMENT

- Human Right to a Clean and Healthy Environment.
- “Environmental Rights, Public Trust, and Public Nuisance: Addressing Climate Injustices Through State Climate Liability Litigation,” article by Professor Hill (50 ELR 11022 (December 2020)). (TWEN)
- “Time for a New Age of Enlightenment for U.S. Environmental Law and Policy: Where Do We Go From Here?” article by Professor Hill (49 ELR 10362 (April 2019). (TWEN)

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

- Environmental Justice Bills (federal).
- “Sacrifice Zones,” article by Professor Hill (The Environmental Forum (Nov/Dec 2021)). (TWEN)

TOPIC – ENVIRONMENTAL JUSTICE LEGISLATION (STATES)

- Environmental Justice Laws (states).

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

- Environmental Justice Policy
- textbook, Chapter 4, “Addressing the Problem: The Executive Branches,”
TOPIC - SIXTH DEGREE: ACTIONS ARE DENIED OR DELAYED NECESSARY AUTHORIZATION ON THE BASIS OF A PERCEIVED FAILURE TO FACILITATE THE NORM


TOPIC – TITLE VI ADMINISTRATIVE COMPLAINTS AND LITIGATION

- The Title VI Approach
- EPA Enforcement of Title VI Regulations.

TOPIC – IMPLIED PRIVATE RIGHT-OF-ACTION

- Citizen Enforcement of EPA’s Title VI Regulations.

TOPIC - 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.

TOPIC – 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).

TOPIC – SEVENTH DEGREE: THE NORM IS FULLY TRANSFORMED INTO LAW TO APPLY - MEASURABLE, RATIONALIZED, ROUTINE STANDARDS OF ENVIRONMENTAL EVALUATION, AUTHORIZATION, AND PERFORMANCE
LIST OF SUGGESTED TOPICS FOR RESEARCH PAPERS

1. Local Land Use Planning and Environmental Justice–Reform of the Zoning Process Needed

2. The “Chicken or Egg” Problem–Why Should It Matter Which Came First, the Pollution–Generating Facility or the Impacted Community?

3. Reconciling the Tension Between Economic Development and Environmental Justice

4. Environmental Justice and the Permitting Process–EPA (or a state regulatory agency) Using Its Discretionary Authority to Impose Additional Permit Conditions on Polluters

5. Public Participation and Environmental Justice–Leveling the Playing Field

6. Public Participation and Environmental Justice–Influencing the Government’s (or Industry’s) Decision-making Processes

7. The Importance of Community Activism, Community Organizing, Community Empowerment, and Community Empowerment Lawyering in Addressing Environmental Injustices

8. Devolution of Environmental Justice–Will Decentralizing Government Decision-making to the Local Level Exacerbate or Alleviate Environmental Justice Concerns?

9. Environmental Justice Implications of Brownfields Redevelopment in the U.S.

10. International Environmental Justice–The Link Between the Concept of Environmental Justice and a Human Right (or Constitutional Right) to a Clean and Healthy Environment

11. International Environmental Justice–The Transport of E-Waste (or Hazardous Waste) From the U.S. (or the E.U.) to China (or Africa)

12. Tort Law and Environmental Justice–The Potential of Toxic Tort, Trespass and Nuisance Legal Theories to Address Environmental Justice Concerns in New Jersey (or Louisiana or another state)

13. Environmental Justice Legal Theories and Tactics–The Comparative Merit of
Legislation (or Litigation, or ADR, or Collaborative Problem–Solving)

14. Environmental Justice and the Procedural Requirements of NEPA (and/or little NEPAs such as CEQA in California or SEQRA in New York) – A Panacea?

15. Environmental Justice and Disclosure Laws–EPCRA (or Proposition 65) as an Aid to Addressing Environmental Justice Concerns

16. Environmental Justice and Farmworkers – Disproportionate Exposure to Environmental Harms and Risks

17. Environmental Justice and Mining Activities in West Virginia

18. Environmental Justice and the Data Wars – An Insurmountable (or Surmountable) Evidentiary Burden for Communities

19. Environmental Justice and CAFOs – The Impact on Rural (or Native American) Communities

20. Environmental Justice and Transportation – Building Highways and the Adverse Impacts to Urban Communities

21. Environmental Justice and Transportation – Building Highways and the Adverse Impacts to Sacred Sites in Indian Country

22. The Essential Role of National (or State or Local) Government in Protecting Human Health and the Environment and Achieving Sustainable Development for Communities – A Case Study

23. Environmental Justice and Education – The Siting of Elementary Schools on Former Landfills and EPA’s Initiative to Address This National Issue

24. Environmental Justice and Healthcare – The Lack of Access to Adequate Healthcare and Impacted Communities in Louisiana (or New Jersey or another state)

25. Environmental Justice and High Blood-Lead Levels in Children – Analysis of EPA’s (or a state’s) Initiatives to Address This National Issue

26. The Conflict Between the U.S. Constitution and State Constitutions Regarding the Human Right to a Clean and Healthy Environment

27. The Biden Administration and the Issue of Environmental Justice – Analysis and
Some Predictions