

# Course Syllabus - EESD13H3 - Environmental Law, Policy and Ethics

University of Toronto at Scarborough - Physical and Environmental Sciences

**Environmental Law, Policy and Ethics: EESD13H3F**

Fall Term, 2018 (Thursday 7:00-9:00), Classroom IC 212

## **Instructor**

Graham Rempe, BSc, LLB

## **Contact information**

UTSC email address = [graham.rempe@utoronto.ca](mailto:graham.rempe@utoronto.ca). My office area is EV402 in the Environmental Science and Chemistry Building at 1065 Military Trail. I can be available for office hours ahead of class time if you make a prior appointment by email. My office phone number is (416) 287 7224

Your primary contact for assignment work should be the course TA (contact details will be announced)

## **Course description**

**Law, policy and ethics are key in understanding how we use, manage and respect our environment. This course will introduce students to basic principles of environmental regulation. What is it? How did it evolve? Does it deal fairly with resource preservation, use and allocation? Can it deal with complex emerging problems such as accumulation of toxics, urban sprawl and climate change?**

**We will review the state of the law, with an emphasis on topical issues in Toronto, Ontario and Canada. Throughout the course, students will be asked to consider the ethical foundations for environmental law, and their capability of addressing today's challenges.**

## **Marking Scheme**

There will be a thirty minute, 15% test in class on each of October 4, and November 8. These tests will be based on cumulative knowledge but will stress recent material.

The final exam will be worth 30%.

All test and exam questions will be multiple choice, true/false, short answers, essay, or any combination of these.

Students will complete an assignment worth 35% of their final mark on a current environmental law issue. The assignment will be prepared individually and in groups, using the topics below. The assignment is marked as follows:

1. Part 1 due Sep 20. Worth 5%. Each student will individually briefly outline topic/issue and research/bibliography
2. Part 2 due Oct 18. Worth 15%. Each student will individually provide a briefing note with Frequently Asked Questions. Each student will also briefly outline their own participation in the group effort
3. Part 3 due Nov 15 or 22 (date to be confirmed with me by Oct 18). 15% Group presentation of issue to class with chance for questions. Each group will post a written outline of their presentation at least three school days in advance.

Participation is worth 5% of your final grade, and is at my discretion based on attendance, participation in classroom activities, and student presentations.

Work that is late without an acceptable excuse will be subject to a penalty of 5% of the value of the assignment per day late.

### **Assignment**

You may select from one of the following exercises. These projects are to be undertaken in groups, as indicated.

1. Your group is examining the proposed Kinder Morgan Trans Mountain Twinning pipeline. Half of the group will propose this project, and half will oppose. Participants will have to agree in advance and get approval as to the scope of issues covered. The presentation will be a mini hearing before the National Energy Board (Up to 16 students).
2. Your group is examining a hypothetical waste incinerator in Toronto. Half the group will be in support, and half against. This exercise would be in the format of an Environmental Review Tribunal hearing. (Up to 16 students)

We will discuss the approach to preparation and presentation of these issues further in class.

I am prepared to consider other topics, but they must be done as a group, and they must be approved by me in writing in advance. It is possible that we will have to modify the assignment depending on class size. The basic format will be as outlined above, though.

## Readings

**You are responsible in its entirety for** Muldoon et al *An Introduction to Environmental Law and Policy in Canada (Second Edition)*. Toronto: Emond Montgomery, 2015. It is available at the bookstore and at the library- <http://go.utlib.ca/cat/6997649> (print) where it is on reserve

**You are also responsible for all of the lecture contents, and materials posted on Quercus as well as any materials prepared/presented by other students in the course as part of their assignment.**

Additional reference texts are:

Benidickson – Essentials of Canadian Law – Environmental Law (3d. ed.) Irwin Law Inc. Toronto, 2009 – available at the library <http://go.utlib.ca/cat/6664646> (print) - <http://go.utlib.ca/cat/8283066> (online)

Boyd, Unnatural Law. Rethinking Canadian Environmental Law and Policy. Vancouver: UBC Press, 2003 - <http://go.utlib.ca/cat/4999129> (print), <http://go.utlib.ca/cat/9091509> (ebook)

Estrin et al, Environment on Trial (3d ed.). Toronto: Emond Montgomery, 1993- available at the library <http://go.utlib.ca/cat/3414114>

**You are also responsible for any additional readings as specified below, or assigned in class.**

## Writing Support

If you are having difficulties writing, you should contact The Writing Centre (link below) which offers a range of services to help.

<http://www.utsc.utoronto.ca/twc/>

If you are having difficulties with the English language, services are available through the English Language Development Centre. See the link below.

<http://www.utsc.utoronto.ca/eld/>

## Course Outline

### Lecture 1 – Sep 6, 201

Ways to think about trees

- Course outline
- Tragedy of the Commons
- The ethical foundations for environmental law

Required reading:

- Muldoon et al, pp 3 – 37
- Hardin, G. The Tragedy of the Commons. 1968. Science 162: 1243  
[http://www.garretthardinsociety.org/articles/art\\_tragedy\\_of\\_the\\_commons.html](http://www.garretthardinsociety.org/articles/art_tragedy_of_the_commons.html)
- *Building a Strong Foundation for Action: A Review of Twelve Fundamental Principles of Environmental and Resource Management Legislation.* DeMarco, Jerry V. Journal of Environmental Law and Practice 19.1 (Oct 2008): 59-69 (on reserve).

Exercise:

The Tragedy of the Commons game!

Discuss student assignments

### Lecture 2 \_ Sep 13, 2018

Sources of Law: From the Constitution to Judge Judy

- The Constitution
- Legislation
- The Courts (and Tribunals)

Reading:

- Muldoon et al, pp 33 – 83
- *Building a Strong Foundation for Action: A Review of Twelve Fundamental Principles of Environmental and Resource Management Legislation.* DeMarco, Jerry V. Journal of Environmental Law and Practice 19.1 (Oct 2008): 59-69 (on reserve).

Exercise:

Research tools

Ontario Legislation (elaw)

<http://www.e-laws.gov.on.ca/navigation?file=browseStatutes&reset=yes&menu=browse&lang=en>

Canadian Legislation

<http://laws-lois.justice.gc.ca/eng/acts/>

Case Law

<https://www.canlii.org/en/>

Environmental Registry

[https://www.ebr.gov.on.ca/ERS-WEB-](https://www.ebr.gov.on.ca/ERS-WEB-External/content/about.jsp?f0=aboutTheRegistry.info&menuIndex=0_1)

[External/content/about.jsp?f0=aboutTheRegistry.info&menuIndex=0\\_1](https://www.ebr.gov.on.ca/ERS-WEB-External/content/about.jsp?f0=aboutTheRegistry.info&menuIndex=0_1)

### **Lecture 3 – Sep 20, 2018**

Survey of Canadian Environmental Law

- Key federal legislation
- Key Ontario legislation
- Key municipal legislation

Reading:

- Muldoon et al, pp 87 - 99

Exercise:

Sorting out jurisdiction. Who has the power? The Constitution game: challenges to jurisdiction and the outcome in the courts

**Student Assignment Part 1 (5%) must be submitted in class and posted on Quercus**

### **Lecture 4 – Sep 27, 2018**

Courts and Tribunals

- What are they?
- What do they do?
- How do they work?

Reading:

- Muldoon et al, review pp. 1 – 99

Exercise:

Writing reports and giving evidence. The do's and don't's

Who wants to be a witness?

Review for midterm next week

### **Lecture 5 – Oct 4, 2018**

Environmental protection regimes

- Private vs public law
- Command and control Part 1 - Command
- Approaches to approvals and standards

Reading:

- Muldoon et al, pp. 129 – 173

**Mid – term test worth 15% in class (30 mins)****Note that there is no October 11 class****Lecture 6 – Oct 18, 2018**

Implementing environmental protection regimes

- Command and control Part 2 - Control
- Approvals, Orders and Prosecutions
- Environmental rights

Reading:

- Muldoon et al, pp. 339 – 383
- Review pp. 129 – 173
- Review of pp 175 – 219 is not compulsory, but is recommended

Exercise:

Using the Environmental Registry and the Environmental Bill of Rights.

Review midterm

**Student Assignment Part 2 (15%) must be submitted in class and posted on Quercus****Lecture 7 – Oct 25, 2018**

Using the civil courts

- Standing- the ability to sue
- Torts (or causes of action) – the basis of lawsuits
- Proof
- Remedies

Reading:

Muldoon et al, pp. 317 – 338

Exercise:

The BURDEN of proof

Presentation of technical evidence revisited

**Lecture 8 – Nov 1, 2018**

Indigenous people

- Treaties and title
- Consultation and accommodation
- UNDRIP, FPIC, vetoes and consents

Municipal regulation

Reading:

- Muldoon et al, pp. 101 – 116
- <https://www.ontario.ca/page/environmental-assessments-consulting-indigenous-communities> (optional)

Exercise:

Consulting with the public. How do you keep everyone happy? How do you deal with the NIMBYs? Consulting indigenous groups.

Review for midterm next week

**Lecture 9 – Nov 8, 2018**

Pro-active regulation

- Environmental Assessment
- Planning Act
- Brownfield management

Reading:

- Muldoon et al, pp. 223 – 295
- Lindgren, *Environmental Assessment in Ontario: Rhetoric vs. Reality*

<http://s.cela.ca/files/766.LindgrenDunnFinal.pdf>

**Mid – term test worth 15% in class (30 mins)**

**Lecture 10 – Nov 15, 2018**

International law

- Convention vs custom
- Environmental treaties
- UNFCCC and Paris

Corporations and markets

- Does voluntarism work?
- Can we make it work?
- Corporate social responsibility and social license

Reading:

- Muldoon et al, pp. 117 – 125, and 297 - 314

Exercise:

Review midterm

**Student presentation (15%) to be scheduled with me in advance**

**Lecture 11 – Nov 22, 2018**

**Student presentation (15%) to be scheduled with me in advance. If time is available, we will use this slot for “catching up” and exam review.**

**Lecture 12 – Nov 29, 2018**

Where are we headed?

- Modern trends
- Can we avoid the Tragedy of the Commons?

Reading:

- Review entire Muldoon text
- Review the Hardin and DeMarco items from lecture 1

Exercise:

Course **review** and questions

**The Fine Print*****Absences:***

If you need to miss a term test for any legitimate reason, you must submit an original copy of any appropriate documentation within **three** business days of your absence. If the reason for your absence is medical, an official UTSC medical note must be completed by a doctor who examined you while you were ill/injured (i.e. not after the fact). The medical note can be downloaded at: [http://www.utsc.utoronto.ca/~registrar/resources/pdf\\_general/UTSCmedicalcertificate.pdf](http://www.utsc.utoronto.ca/~registrar/resources/pdf_general/UTSCmedicalcertificate.pdf). Note that conditions ranked as mild or negligible will not be considered a valid excuse.

***Missed term work:***

If a legitimate reason prevents you from submitting a piece of term work by its posted deadline, you must submit an original copy of any appropriate documentation within **three** business days of your absence. If the reason is medical, an official UTSC medical note must be completed by a doctor who examined you while you were ill/injured (i.e. not after the fact). The medical note can be downloaded at: [http://www.utsc.utoronto.ca/~registrar/resources/pdf\\_general/UTSCmedicalcertificate.pdf](http://www.utsc.utoronto.ca/~registrar/resources/pdf_general/UTSCmedicalcertificate.pdf). Note that conditions ranked as mild or negligible will not be considered a valid excuse.

**Academic Misconduct and Academic Dishonesty** will not be tolerated. Students engaging in misconduct or dishonest practices on exams, quizzes, or other assignments will be dealt with according to the guidelines established by the university.

**Plagiarism:** Please consult the University Calendar for a discussion and outline of the policy on plagiarism and academic integrity (also see proceeding section below). The sanctions can be severe. If, after reviewing the University policy, you are uncertain about what constitutes plagiarism, talk to your course instructor.

**Academic Integrity:** Academic integrity is essential to the pursuit of learning and scholarship in university, and to ensuring that a degree from the University of Toronto is a strong signal of each student's individual academic achievement. As a result, the University treats cases of cheating and plagiarism very seriously. The University of Toronto's Code of Behaviour on Academic Matters (<http://www.governingcouncil.utoronto.ca/policies/behaveac.htm>) outlines the behaviours that constitute academic dishonesty and the processes for addressing academic offences. Potential offences include, but are not limited to:

In papers and assignments:

- Using someone else's ideas or words without appropriate acknowledgement.
- Submitting your own work in more than one course without the permission of the instructor.
- Making up sources or facts.
- Obtaining or providing unauthorized assistance on any assignment.

On tests and exams:

- Using or possessing unauthorized aids.
- Looking at someone else's answers during an exam or test.
- Misrepresenting your identity.

In academic work:

- Falsifying institutional documents or grades.

- Falsifying or altering any documentation required by the University, including (but not limited to) doctor's notes.

All suspected cases of academic dishonesty will be investigated following procedures outlined in the Code of Behaviour on Academic Matters. If you have questions or concerns about what constitutes appropriate academic behaviour or appropriate research and citation methods, you are expected to seek out additional information on academic integrity from your instructor or from other institutional resources (see <http://www.utoronto.ca/academicintegrity/>).

Please consult the University Calendar for information about grade distribution and academic conduct.

**Accessibility:** Students with diverse learning styles and needs are welcome in this course. In particular, if you have a disability/health consideration that may require accommodation, please feel free to approach me and/or the AccessAbility Services Office as soon as possible. I will work with you and AccessAbility Services to ensure you can achieve your learning goals in this course. Enquiries are confidential. The UTSC AccessAbility Services staff (located in S302) are available by appointment to assess specific needs, provide referrals and arrange appropriate accommodations (416) 287-7560 or [ability@utsc.utoronto.ca](mailto:ability@utsc.utoronto.ca).

Students are encouraged to review the Calendar for information regarding all services available on campus.