

Advanced Environmental and Natural Resources Practice
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Course Description:

Advanced Environmental and Natural Resources Practice (Advanced Practice) is a simulation-based capstone course that prepares students to begin the practice of environmental and natural resources law. Because the course provides a simulated practice experience and many transferable skills, students who are not committed to an ENR practice are welcome to enroll. The course is required to receive the Sustainability and Environmental Justice certificate. The course also helps satisfy your experiential learning requirement.

The course stresses independent learning of advanced ENR topics, legal analysis and writing in the variety of contexts encountered in ENR practice along with developing skills such as complex problem solving, strategy & tactics, fact development, client counseling, oral presentations, negotiation and settlement. Students will prepare transactional documents, engage in policy and permitting representation, and represent clients with respect to compliance and enforcement. Throughout the course, students will be expected to examine and develop legal strategies, thus building their capacity for strategic legal thinking, problem-solving and solid judgment to at least the intermediate level.

ENR Intro (Law 223), Energy & Climate Law, Water Law, Land Use, Community & Environmental Justice Clinic, or permission of the instructor is a prerequisite because the class will demand some familiarity with ENR law or willingness to invest additional effort. Students can take the course either immediately after the Intro course or later during the student's final semester.

Learning Objectives:

Knowledge

- 1) Understand the environmental and natural resources regulatory systems at an intermediate/advanced level.
- 2) Understand at an intermediate/advanced level: water quality regulation, citizen suits and environmental civil and criminal enforcement.
 Understand at an intermediate level: GHG regulation, air quality, compliance assurance, voluntary certification and corporate social responsibility, forest management policy, and contaminated sites.
- 3) Be able to spot at an intermediate level ENR and professional responsibility issues often encountered in practice.

Skills

- 1) Fact development & client interviewing at basic/intermediate level
- 2) Client counseling at basic/intermediate level
- 3) Researching environmental law at intermediate level
- 4) Performing technical legal analysis at intermediate/advanced level
 Issue-spotting, statutory and regulatory interpretation, choice of law

- 5) Written communication at intermediate level – opinion letters, transactional documents, client letters and memos, rule-making comments, complaints, summary judgment briefs, and staff/file memos
- 6) Strategic legal thinking/ problem-solving/ judgment at intermediate level**
- 7) Presenting concise oral briefs on law, facts, and policy at intermediate level
- 8) Negotiations at intermediate level
- 9) Oral argument at basic/intermediate level

Simulations and Written Assignments

The course involves simulated practice in three contexts drawn from real life. The first context is an existing integrated pulp and paper facility located in Halsey, Oregon, currently owned by two separate companies. The invented facts involve a corporate purchaser acquiring both plants, reintegrating them, and modifying & expanding them. Along the way, we look at transactional real estate practice, permitting, and enforcement. Obviously, field trip! Using a real facility allows you to do deeper, more realistic, online fact investigation and have a deeper level of engagement than when simulations use fully invented case files (e.g. moot court). The second context is an existing bulk oil transfer terminal in Portland: Zenith Energy. We will be litigating from the perspective of the environmental plaintiffs trying to close the facility in the land use and air quality contexts. We will have opportunities to discuss the Zenith matters with the in house environmental attorneys responsible for the cases (and their outside counsel CRAG). Guest speakers AND field trip! Finally, we will be analyzing strategies seeking to block the expansion of a gravel operation in North Santiam canyon and developing alternatives. Again, guest speakers AND field trip!

Assignments developed in advance before the course starts guide our practice simulations, but I may modify assignments along the way to explore ramifications of your advice and decisions – i.e. to provide “real world” feedback on your choices.

You will be new associates at an environmental boutique law firm. You will represent a recently formed fictional corporation that acquires both parts of the pulp & paper facility, operates the facility, and modifies it to exploit new markets and representing environmental plaintiffs on a pro bono basis. In certain exercises, you may “switch” sides and represent other parties – drafting a citizen suit complaint (as a group) and representing citizen plaintiffs and government agencies in multi-party enforcement negotiations. You will also be “representing” Columbia Riverkeeper and Willamette Riverkeeper on a pro bono basis with respect to Zenith Energy, paralleling the actual on-going litigation with respect to that facility. Finally, you will be “representing” Edith Brown Weiss who successfully challenged the Linn County decision to allow expansion of a gravel pit near her home in the North Santiam canyon that has been remanded from LUBA>

Class Format:

A typical class without an in-class simulation will cover (1) students sharing their written products, (2) student reflections on their process and product, (3) debriefing substance and skills involved, and (4) discussion of next scenario, assignment, and advice about resources, process, & skills.

Occasionally, we will spend a class session just reading and discussing either documents providing facts or information about the law relevant to the cases.

A typical in-class simulation session will involve (1) student simulation performance [1 hour], (2) student reflections on their performance, (3) debriefing substance and skills involved, and (4) description of next scenario, assignment, and advice about resources, process, & skills.

Reading:

I will make exemplars and skills readings available to you on WISE. There is no other reading except whatever research is necessary to complete an assignment.

Assessment: NO EXAM

I assess students based on written assignments (70%), simulation performances and class participation in other classes (30%),

You will complete eight short written assignments (5% each), two individual medium written assignments (10% each), one medium written assignment (group) (5%) and a citizen suit complaint (group) (5%). I have front loaded the course to put most written assignments before Spring Break.

You will participate in seven in-class oral simulations (3% each) and other class participation (9%).

I will grade written assignments, simulation performances, and class participation on the standard A+ to F basis. I expect every student to invest sufficient effort and thought to receive a grade in the A range, although if a student does not perform adequately, I will assign grades in the C range and below.

- Class Schedule** *** short written products (2-3 pp single spaced)**
****medium written product (3-5 pp single spaced)**
***** citizen suit complaint (5-10 pp single spaced)**
▲ In class oral simulations

Class 1 Onboarding new ENR associates – firm practices and expectations; professional responsibilities; associate supervision, evaluation, and bonuses; ENR research resources and exemplars introductions to NAPCO, Columbia Riverkeepers, and Edith Brown Weiss (our clients).

Thinking Strategically

- *Class 2 **Response to LUBA decision for Weiss due;** debrief
 *Class 3 **Draft strategy memo for Weiss due;** debrief

Facility Acquisition – Transactional Practice

- *Class 4 **NAPCO due diligence checklist due;** debrief
 *Class 5 **Due diligence opinion letter on Halsey mill draft due;** discussions with supervising attorney
 *Class 6 **Key provisions of purchase/sale agreement for Halsey mill due;** debrief

Energy and Climate Policy & Permit Representation

- Class 7 Review Zenith Energy documents, synthesize to describe the Zenith facility, environmental issues, and intervention strategies.
- ▲ *Class 8 **Client letter advising strategy for closing down Zenith facility due & client counseling**
- Class 9 Title V air permitting discussion
- Class 10 Analysis of Zenith Title V permit renewal (if LUBA appeal succeeds)
- *Class 11 **Draft comments opposing Title V permit, circulation list**
- Class 12 Land use compliance statements, zoning and comprehensive plan background discussion
- Class 13 LUBA appeals and judicial review background discussion
- Class 14 Review Zenith Energy record and LUBA decision if available and discuss
- *Class 15 **Outline strategy to protect original LUCS/bolster Portland on LUCS, support/seek judicial review of LUBA decision due,** discuss.

Compliance and Enforcement

- ▲ Class 16 **Client interviewing/counseling about proposed modification of Halsey mill**, debrief
- ***Class 17 **Citizen Suit notice of intent to sue and complaint due** (group project – each student drafts a portion of assignment), debrief
- ▲ Class 18 **Client interviewing & counseling** in response to citizen suit notice, debrief
- ▲** Class 19 **Client letter post-inspection refusal due, client counseling**
- Class 20 Debrief
- Spring Break**
- **Class 21 **Request for settlement authority for enforcement negotiations due**, (requires switching sides for government and intervenors), debrief and discuss negotiating settlement authority
- ▲ Class 22 **Multi-party enforcement negotiations-first meeting**
- ▲ Class 23 **Multi-party enforcement negotiations-final meeting**
- ▲ **Class 24 **Joint draft settlement agreement due**, discussion of draft
- Class 25 Debrief NAPCO negotiations and settlement
- Class 26 Debrief the Weiss and Zenith Energy cases, course
- Picnic Potluck – April 13th, 6:30 – 8 pm at Ricks. Awards & prizes**