ADA Disclosure: The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean of Student Affairs, and to the Center for Disability Services (CDS) to make arrangements for accommodations. CDS is located at 200 S. Central Campus Drive, (Union Building), Rm 162 or you can call 801-581-5020. All written information in this course can be made available in alternative format with prior notification.

Course description: This syllabus describes the classroom portion of the environmental practice program. (Those students who are enrolled in an environmental clinic will receive additional information on that aspect of the program.) Readings and discussions will address procedural and practical aspects of environmental law not covered in the substantive Environmental Law or Natural Resources courses, including client interviews and counseling, administrative practice and decision making, case development, jurisdiction, citizen suits, pleadings, discovery, liability analysis, remedies and relief (including preliminary relief and civil penalties), negotiations, selected aspects of trial practice, and ethical issues that commonly arise in environmental practice. This course is not a substitute for either Lawyering Skills or Pre-Trial or Trial Practice. Rather, it will address aspects of environmental practice not covered in basic skills courses, or that are covered more generally in those courses. However, this course does meet the College of Law skills course requirement.

Required Text: All readings and exercises are from Anderson and Hirsch, ENVIRONMENTAL LAW PRACTICE, PROBLEMS AND EXERCISES FOR SKILLS DEVELOPMENT (Carolina Academic Press, 3d ed. 2010). Some of the exercises in the book may be modified for classroom simulations. The book also requires you to do original legal research, and refers to some other books and materials. Please be considerate of your classmates and use any hard copies of library materials (including case reporters, legislative history, etc.) for the minimum amount of time necessary. (Accessing materials online obviously will minimize conflicts.) As discussed further below, because of the compressed timing of this course, I suggest that you read as much of the book and prepare as many of the problems as possible before the class begins. At a minimum, you should read and prepare for all of Chapter 1 before the course begins.
Other Available Materials: A number of hornbooks and other materials are also available in this field, some of which are cited in the text. The most frequently used general loose leaf services in the field are BNA Environment Reporter and Environment Reporter Cases; and the Environmental Law Reporter published by the Environmental Law Institute (ELI). There are also a number of more specialized loose leaf services. ELI, Westlaw and Lexis have special environmental law databases, and a tremendous amount of environmental documents, data and other information is available on-line, including in EPA and other government agency websites.

Objectives and Methodology: The objective of the course is to provide an introduction to many of the skills most commonly used in environmental practice. (Most of those skills can only be mastered after years of actual practice in the field.) The class will alternate between substantive readings and discussion of the problems and exercises in the book, lectures, and simulated class exercises. Students are encouraged to participate critically, that is, to express opinions and insights rather than simply to recite from the materials. The course covers a range of ethical and other subjective issues that are open to multiple legitimate positions. Students will participate in skills exercises in writing and in class to synthesize the substantive and strategic skills learned in the course. In reading and preparing for class, you should write down the answers to all assigned questions in the book designated as “Problems”. These answers will not be turned in to the instructor, but you will be expected to use them to discuss the problems in class. Therefore, this “writing” need only be sufficient for you to be able to participate in class. Some of the “problems” are quite simple. Others require more thought and analysis. You are also required to prepare all assigned questions in the book designated as “Exercises” for submission to the instructor and formal grading, as explained further below. Those assignments must be prepared as you would in real practice, but within the obvious time constraints we have in this compressed course format.

Requirements and Expectations:

Full class attendance and participation is essential to this course, because of the focus on assigned in-class exercises and discussion. Although the 20% attendance rule in the College of Law Handbook and in ABA regulations will be enforced if necessary, due to the concentrated nature of this two-week course 100% attendance should be presumed. Even where individual students are assigned roles in specific class exercises, other students are expected to read and work through each exercise as well, and to critique and comment on the issues raised.

Computer use in class and any material available on TWEN. You may use computers in class to take notes, and to look for relevant material on the internet if you think it will help your understanding, or if it may help you add to class discussion. Computer use for purposes not related to class (e-mail, surfing the internet for other purposes, computer games, etc.) is unprofessional, distracting to other students, and not allowed.

Written and in-class exercises. Because of the compressed, two-week nature of this version of the course, I understand that you will have a limited amount of time to write
and to prepare the exercises. However, you will still get a lot of benefit from these assignments, and because the class is scheduled to meet only in the morning, you will have all afternoon to prepare these assignments. Remember that you are receiving the same academic credit (2) as you would for the semester-long version of the class, so an equivalent commitment of effort is appropriate (although there will be less reading – in the semester-long course I typically assign supplemental readings in addition to the text). All assignments must be submitted on time because you cannot participate adequately without having done the assignments, and in some cases, subsequent exercises rely on what you and your colleagues have prepared previously. Late assignments will be penalized with reduced grades. Be as creative as you’d like to with class exercises – this should be fun as well as educational!

**Grading.** Grading will be based on:

<table>
<thead>
<tr>
<th>Assignment Type</th>
<th>Weight</th>
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</thead>
<tbody>
<tr>
<td>Written exercises</td>
<td>40% (5 assignments, worth 10% each, drop lowest grade)</td>
</tr>
<tr>
<td>In-class exercises</td>
<td>40% (5 exercises, worth 10% each, drop lowest grade)</td>
</tr>
<tr>
<td>General class participation</td>
<td>20%</td>
</tr>
</tbody>
</table>

Grading for class participation will consider attendance as well as quality and quantity of participation. I will grade class exercises based on clarity, precision, judgment, depth and originality of written and oral presentations, and not on “winning or losing” an exercise. I understand that most of us get nervous about presentations. I will not grade based on “polish”. That will come over time. I will grade based on your level of preparation for and engagement in the exercises. (Which means that if everyone takes the class seriously and engages fully in the process, everyone should get a good grade.)

**PLEASE NOTE:** There will be no final exam or paper. Your final grade will be based on the aggregate of your performance in all of the written and oral exercises, as well as class participation. This is because I believe that you will learn more from this course by devoting your available time to the actual problems and exercises. That will require more work before and during the class than is true for most courses. The payback is that you will be finished with this course completely at the end of the scheduled classes.

**Schedule and Assignments:**

Subject to modification as we proceed, the general plan is to cover each of the five chapters in two class sessions. The first session for each chapter, and potentially the first hour or so of the second session, will consist of lecture, discussion of readings, and discussion of questions in the book labeled “Problems”. In the second session we will conduct the “Exercises” in the book. The tentative class schedule follows, and we will modify as needed through the ten days of classes. I will make individual assignments for exercises when the class roster is more certain.
Introduction; Environmental Compliance and Counseling (Chapter 1)

Monday, May 16

Introductions, discussion of course objectives and logistics

Discuss pp. 3-55; Problems 1.1 - 1.6

(10-15 minute break somewhere convenient)

Lecture and discussion: Interviewing and counseling environmental clients; practical and ethical considerations

Discuss pp. 64-73; Problems 1.12 – 1.19

Tuesday, May 17

Limeko In-Class Exercise – Client Compliance Counseling

For this exercise, we will combine the readings on pp. 55-61 and Problems 1.7 - 1.11 with Exercises 1.1 (pp. 61-64) and 1.2 (pp. 73-74). The same facts and law apply to both exercises. Instructions follow:

1. Everyone must read and analyze pp. 55-61 and the associated problems. This information and analysis is essential to participate in or to understand and critique the class exercise.
2. Everyone must write and submit a legal memorandum (due Tuesday morning) addressing one of the questions at the end of Exercise 1.1 (assignments to follow). Remember that this is an in-house counseling memorandum and not an “advocacy” document, and think about how that should affect the content and tone of the memorandum.
3. The class exercise will consist of a meeting called by and run by Carl Counsel. Carl should be prepared not only to run the meeting and to ask opening questions, but to follow up to test the positions of the other participants as they relate to the client’s overall interests, as you would expect a corporate general counsel to do.
4. Other meeting participants will include:
   a. Three members of Carl’s junior in-house counsel staff (not one as stated in the text). Each will answer one of the three questions in Exercise 1.1.
   b. The outside counsel identified in Exercise 1.2, who will address the legal and ethical issues identified there.
5. The rest of the class should be prepared to listen carefully and to critique how the meeting is handled from a substantive, tactical and ethical perspective.
**Environmental Enforcement** (Chapter 2)

**Wednesday, May 18**

Discuss pp. 75-130; Problems 2.1 - 2.7

**Break**

Witness interviewing and negotiation skills lecture and discussion

**Thursday, May 19**

**Agra Enterprises In-class Exercise – Administrative Enforcement and Settlement**

This exercise is based on all of the materials on pp. 130-138, and Exercises 2.1– 2.3. The same facts and law apply throughout these exercises. Instructions follow:

1. **Everyone must write and submit an Administrative Complaint (due Thursday morning)** as described in Exercise 2.2, but you may work in two-person teams to work through the EPCRA Penalty Policy and draft your complaints. Note that a model administrative penalty complaint appears in Appendix A of the text.
2. Assigned students will conduct Exercise 2.1 (fact investigation). One student will be the witness (Agra plant manager); one or more will be the attorney(s) for Agra; and one or more will be the attorney(s) for EPA. The rest of the class should be prepared to listen carefully and to critique how the meetings are handled from substantive, tactical and ethical perspectives.
3. The entire class will conduct Exercise 2.3 in pairs. One student in each pair will be the attorney for EPA, and the other will be the attorney for Agra. The settlement meetings will be based on the administrative complaints you have drafted. Following the settlements, each team will report back on the settlement reached, and how, and we will compare both results and settlement methods.
4. The anticipated schedule will be:

   9:00-10:00   Exercise 2.1 (Fact investigation interviews; debriefing and discussion of facts)

   10:00-11:00  Exercise 2.3 (settlement negotiation) in teams of 2

   11:00-12:00  Team reports and discussion of settlements

**Citizen Suit Enforcement** (Chapter 3)

**Friday, May 20**

Discuss pp. 139-177; Problems 3.1-3.6
Monday, May 23

Exercises 3.1-3.1. The above readings and discussion will prepare you to work in teams to complete the three related MEC drafting exercises, which are due on Monday morning: Exercises 3.1 (Information Request); 3.2 (Notice Letter); and 3.3 (Citizen suit complaint).

On Monday morning, you will “serve” these three documents on another team (as well as turning copies in to me). Each team will then meet to discuss how to respond to each of the documents, and then report back to the class on their responsive strategy.

9:00 – 10:15 Team meetings
10:15-10:30 Break
10:30-12:00 Reports and discussion

Private Party Civil Environmental Litigation (Chapter 4)

Tuesday, May 24

Discuss pp. 179-236; Problems 4.1-4.12 and Exercise 4.1 (for class discussion only)

Brief lecture on summary judgment practice

Wednesday, May 25

Exercise 4.2 – Shenandoah Superfund Site Summary Judgment Motions and cost allocation (pp. 236-253)

1. Each of you will write one of the Motions for Summary Judgment identified in Exercise 4.2, which are due on Wednesday morning. (Some exercises may be assigned to more than one student. If so, you will write your motions independently, but act as co-counsel in the in-class multi-party cost allocation negotiation exercise conducted on Thursday morning.)

2. Everyone should read all of the material. In addition to informing your own motion and accompanying brief, it will give you a basis for responding to assertions made by other parties in the cost allocation negotiation.

3. Instead of arguing the Motions for Summary Judgment as if you were in court, we will use the positions asserted in them—along with other relevant factors—for purposes of the negotiation. You should assume that the motions have been filed but not decided, and then use the positions you took in the written motion to try to obtain leverage in the
negotiation. Each of you will have 5-10 minutes to summarize the argument you made in your motion and to explain how it should affect your client’s share of cleanup liability. However, you all have to understand the other parties’ arguments well enough to rebut their assertions during the negotiation.

**Environmental Policy and Administrative Practice (Chapter 5)**

**Thursday, May 26**

Discuss pp. 255-302; Problems 5.1-5.13

**Friday, May 27**

**Exercises 5.1-5.2 (Environmental justice and administrative practice)**

1. Read pp. 302-323 as background.
2. Each of you will be assigned to file **written comments, due Friday morning**, for one of the parties identified in Exercise 5.1
3. On Friday morning, we will conduct and debrief the administrative public hearing described in Exercise 5.2