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**ENVIRON 835K**

**Environmental Law, Governance and Regulation**

**Fall 2018**

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**Dates / course meeting time:** 150 minutes of contact time per week for 14 weeks

**Academic credit:** 3

**Course format:** Lecture & Separately Scheduled Discussion

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### **Instructor's Information**

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Kathinka Fürst, Adjunct Assistant Professor of Environmental Policy, Duke Kunshan University.

Dr. Fürst is an environmental law and regulation researcher with interest in environmental policy processes, law enforcement and compliance and the role of civil society actors in environmental governance processes.

Office hours: Monday 3:30-5:30 pm, or on request. Office location: CC 2011.

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### **What is this course about?**

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This is an introductory environmental law course, with emphasis on the practical use and application of legal concepts within the context of pollution control and resource management. This class will explore the role of law, regulation and governance in protecting, managing and restoring the environment and natural resources. Understanding these processes in China will be the main focus of the class. On occasions, cases from other jurisdictions will be included in the syllabus.

The first part will focus on a general introduction to the development of environmental law and regulation. This section will outline various problem issues environmental law and regulation seek to address and the overarching challenges inherent in these processes on a global, national and sub-national level. It will also include a general introduction to environmental governance structures in China, with some attention to China's role in the global environmental governance system.

The second part of the course will focus on the utilization of environmental laws and regulations, by various stakeholders, in protecting, managing and restoring the environment and natural resources through analysis of legal cases and relevant case studies. Through the analysis of case studies students will become familiar with the pro's and con's of different regulatory instruments in achieving, or failing to achieve, the overarching goal of protecting, managing and restoring the environment and natural resources. Students will be exposed to different regulatory instruments such as environmental regulatory standards, the best available technology approach, emission licenses and pollution discharge fee system, environmental impact assessment and environmental information transparency. This section will also include case studies focusing on public and private non-state regulatory mechanisms including voluntary standards and civil regulatory mechanisms in the environmental field.

The third part focuses on compliance. This section will also focus on enforcement processes, including different enforcement styles and the effectiveness of different ways to enforce regulatory law. This section will also examine different approaches to facilitate deterrence effects in environmental law enforcement and insights from the field

of law and behavior in environmental law enforcement. Case studies illuminating different national approaches, including China, will be included in this section.

The fourth part of the course focuses on environmental law and regulation on the international arena.

At least one field trip will be integrated into this course in order for the students to experience firsthand some of the challenges and opportunities in enforcing environmental law in China. We will visit a local environmental court. The fieldtrip will also include visits to plaintiffs and defendants in environmental litigation cases. Through the fieldtrip students will learn more about public interest litigation as an environmental governance tool.

The instructor will also invite practitioners to give guest lectures on relevant topics.

### **What background knowledge do I need before taking this course?**

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No prerequisite required.

### **What will I learn in this course?**

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Through participation in this course, you will obtain theoretical and practical skills that will enable you to:

- Understand the environmental law making and enforcement processes both internationally and in China
- Analyze the attributes of different regulatory and enforcement methods and how they affect regulatory outcomes.
- Identify the role of state and non-state actor's in various environmental governance processes for preventing and mitigating environmental risk.
- Understand the inter-relationship of law, politics, economics and science in environmental law.
- Use and participate in case studies to apply theory to applied environmental problem solving.
- Utilize primary source materials such as the laws, regulations, and court opinions to analyze and apply environmental problem solving.
- Develop legal writing and analysis skills.
- Execute self-directed research and learning in applying legal analysis of environmental law, governance and regulation to current issues in the field.

### **How will I know if I have met the objectives of this course?**

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A number of different types of assignments will be used to evaluate student mastery of the learning objectives in this class. First, students are required to actively engage in class discussion. Through discussions, students are expected to demonstrate their understanding of the material and critical thinking about the subject matter. Second, students will write short blog entries throughout the course to analyze the assigned reading and prepare for in class discussion. Third, students will write a reflective analysis based on their observations from the field trip. The reflective analysis will aid the student in linking the theoretical frameworks and challenges studied in the reading material and discussed during classes into real-life challenges for environmental policy makers/implementers in China. Fourth, students are required to prepare three legal analysis throughout the course and present these analyses in class.

### **How can I prepare for the class sessions to be successful?**

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In order to prepare for the classes, students need to read all assigned material. Students are also required to conduct independent research to identify relevant cases and examples in preparation for group discussion in class.

### **What required texts, materials, and equipment will I need?**

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Required readings will be posted on Sakai prior to classes. Readings will include current research papers, legal briefings, case studies, reports and relevant laws. Students are required to read all assigned material and be prepared for class discussion.

### **What optional texts or resources might be helpful?**

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The instructor will encourage students to watch some documentaries in preparation for classes. The instructor will make these documentaries available to the students well in advance.

### **How will my grade be determined?**

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The main component of the grade in this class is based on classroom participation. Students are required to finish reading course materials before class, prepare discussions, summary of readings, introduction to cases and contextualization of course material as provided by the instructor. Students will be required to submit three written (?) assignments throughout the course. The students are required to choose three topics from the overall course material which they will contextualize and analysis. Students are also required to write a reflective analysis sharing their impressions from the fieldtrip in relation to the theoretical framework and issues discussed in the class.

### **Classroom engagement and presentations (30 %):**

Students are required to read assigned readings before class and actively engage in discussions during the class. Students will be required to give presentations on readings and topics as assigned by the instructor throughout the course. Students will also be required to lead in-class discussions throughout the course. Students will also be required to present analysis of required readings in relation to current issues/problems. Students will also be required to present legal analysis in class. Students will receive a mid-term grade on this component of the class so they are aware of the class expectations and their level of performance throughout the class.

### **Blog (10 %):**

Students are required to write a short blog with an analysis of the assigned reading. The lecturer will post instructions on the blog assignments though the Saki platform. The blog entries must be uploaded on Saki prior to class and should not exceed 250 words per blog entry.

### **Field trip reflective analysis (10%):**

The student will be required to write a reflective analysis sharing their reflections from the field trip in relation to the theoretical framework and issues discussed in the class.

### **Legal analysis (50 %):**

Each student will write five legal analysis through the course. At the outset of the course, students will be allocated different thematic areas and timeline for the submission of the analysis and dates for in-class presentation of the analysis. In order to improve their writing skills students will be required to re-write their legal analysis. The original draft counts for 50% and the re-write for 50%.

### **What are the course policies?**

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#### **ACADEMIC INTEGRITY:**

Each student is bound by the academic honesty standard of the Duke Kunshan University. Its Community Standard states: "Duke Kunshan University is a community composed of individuals of diverse cultures and backgrounds. We are dedicated to scholarship, leadership, and service and to the principles of honesty, fairness, respect, and accountability. Members of this community commit to reflecting upon and upholding these principles in all academic and non-academic endeavors, and to protecting and promoting a culture of integrity and trust."

The students can form study groups to work on the paper reviews and project and help each other learn. However, each student must submit their work and students are not allowed to directly copy another student's work.

**CLASS ATTENDANCE:**

Students are required to engage in active classroom discussion, thus class participation and attendance is mandatory. This includes reading assigned articles and participate in classroom debates.

**POLICY ON MAKE-UP WORK:**

Students are allowed to make up work only for medical reasons, consistent with DKU policy. You must notify the instructor in advance if you will miss a report or presentation.

**What campus resources can help me during this course?**

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**SECTION 1 INTRODUCTION**

**1. Which law is that governed by?**

Each student provide a picture of an environmental scenery that has personal meaning to them. Each student will give an in class presentation explaining which laws and regulations and governing bodies are involved in protecting the scenery.

Reading:

- Rowe, Suzanne E. "Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice." *Stetson L. Rev.* 29 (1999): 1193.

**2. The origin of environmental law and regulation in China**

Reading:

- Percival, Robert V., Christopher H. Schroeder, Alan S. Miller, and James P. Leape. *Environmental regulation: Law, science, and policy*. Wolters Kluwer Law & Business, 2017. Chapter 1 and 2
- Gunningham, Neil, Peter Grabosky, and Darren Sinclair. "Smart regulation: Designing environmental policy." (1999): 389-390. Chapter 1
- Environmental Protection Law of the People's Republic of China 24 April 2014

**3. The hierarchy and bureaucracy of environmental law making and law enforcement**

Reading:

- Legislation Law of the People's Republic of China
- Wang, Alex L. "The search for sustainable legitimacy: environmental law and bureaucracy in China." *Harv. Envtl. L. Rev.* 37 (2013): 365.

**4. Environmental regulatory tools**

Reading:

- Gunningham, Neil, Peter Grabosky, and Darren Sinclair. "Smart regulation: Designing environmental policy." (1999): 389-390. Chapter 2

## 5. Making environmental law (in China)

Reading:

- Van Rooij, Benjamin, and Annemieke van den Dool. 2016. "Lawmaking in China: Understanding Substantive and Procedural Changes." *China Law and Society Review* 1 (1):5-60.
- Mu, Zhilin, Shuchun Bu, and Bing Xue. "Environmental legislation in China: Achievements, challenges and trends." *Sustainability* 6, no. 12 (2014): 8967-8979.

## 6. The organization of environmental law enforcement

Reading :

- Van Rooij, Benjamin, Qiaoqiao Zhu, Na Li, and Qiliang Wang. 2017. "Centralizing Trends and Pollution Law Enforcement in China." *China Quarterly* September (231).
- Pink, Grant, and Robyn Bartel. "14. Regulators networks: collaborative agency approaches to the implementation and enforcement of environmental law." *Implementing Environmental Law* (2015): 308.

## SECTION 2 USING THE LAW TO PROTECT THE ENVIRONMENT

### 7. Visit from environmental law practitioner or fieldtrip excursion to environmental court

TBD

### 8. Environmental disputes

Reading:

- Felstiner, W., Abel, R. and Sarat, A. (1981): "The Emergence of Transformation of Disputes: Naming, Blaming, Claiming..." *Law and Society Review* 15(3-4):631-655.
- Michelson, E. (2007): "Climbing the Dispute Pagoda: Grievances and Appeals to the Official Justice System in Rural China" *American Sociological Review* 72: 459-485.
- Zhao Y. (2004): "Environmental Dispute Resolution in China" *Journal of Environmental Law* 16(2): 157-192.

### 9. The people vs. pollution: The role of pollution victims in environmental regulation in China

Reading:

- Stern, R. E. "On the Frontlines: The Political Logic of Judicial Decision-Making in Chinese Civil Environmental Cases." *Law & Policy* 32, no. 10 (2010): 79-103.
- Van Rooij, Benjamin. "The People Vs. Pollution: Understanding Citizen Action against Pollution in China." *The Journal of Contemporary China* 19, no. 63 (2010).

### 10. Environmental tort litigation in China

Reading:

- Moser, Adam J., and Tseming Yang. "Environmental Tort Litigation in China." (2011).
- Watch documentary: Warriors of Qiugang case

### **11. Environmental public interest litigation in China: Origin and issues**

Reading:

- Rachel E. Stern. "The Political Logic of China's New Environmental Courts" *China Journal* Vol. 72 Iss. 72 (2014) p. 53 - 74 Available at: [http://works.bepress.com/rachel\\_stern/17/](http://works.bepress.com/rachel_stern/17/)

### **12. Environmental public interest litigation: The De Zhou and Taichang case**

Reading:

- Case studies on file with lecturer

### **13. What is the role of EIA in protecting the environment? The Green Peacock case**

Reading:

- ENVIRONMENTAL IMPACT ASSESSMENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA
- Case studies on file with lecturer
- Brombal, Daniele, Angela Moriggi, and Antonio Marcomini. "Evaluating public participation in Chinese EIA. An integrated Public Participation Index and its application to the case of the New Beijing Airport." *Environmental Impact Assessment Review* 62 (2017): 49-60.
- Wu, Jing, I-Shin Chang, Qimanguli Yilihamu, and Yu Zhou. "Study on the practice of public participation in environmental impact assessment by environmental non-governmental organizations in China." *Renewable and Sustainable Energy Reviews* 74 (2017): 186-200.
- Zhao, Yuhong. "Public Participation in China's EIA Regime: Rhetoric or Reality?" *Journal of Environmental Law* 22, no. 1 (2010): 89-123. <http://www.jstor.org/stable/44248722>.

### **14. What is the role of environmental information transparency in protecting the environment?**

Reading:

- Regulations of the People's Republic of China on Open Government Information
- Grant, Don Sherman. "Allowing citizen participation in environmental regulation: An empirical analysis of the effects of right-to-sue and right-to-know provisions on industry's toxic emissions." *Social Science Quarterly* (1997): 859-873.
- Mol, Arthur PJ. "Environmental governance through information: China and Vietnam." *Singapore Journal of Tropical Geography* 30, no. 1 (2009): 114-129.
- Kun Fang, Qiqi Wei, Kathryn K. Logan; Protecting the Public's Environmental Right-to-Know: Developments and Challenges in China's Legislative System for EEID, 2007-2015, *Journal of Environmental Law*, Volume 29, Issue 2, 1 July 2017, Pages 285-315

### **15. What is the role of payment for eco-system services in protecting the environment?**

Reading:

- Gómez-Baggethun, Erik, Rudolf De Groot, Pedro L. Lomas, and Carlos Montes. "The history of ecosystem services in economic theory and practice: from early notions to markets and payment schemes." *Ecological economics* 69, no. 6 (2010): 1209-1218.
- Yin, Runsheng, Can Liu, Minjuan Zhao, Shunbo Yao, and Hao Liu. "The implementation and impacts of China's largest payment for ecosystem services program as revealed by longitudinal household data." *Land Use Policy* 40 (2014): 45-55.
- Wunder, Sven, Stefanie Engel, and Stefano Pagiola. "Taking stock: A comparative analysis of payments for environmental services programs in developed and developing countries." *Ecological economics* 65, no. 4 (2008): 834-852.

## 16. Natural resource management

Reading:

- H. Brian Hwang; Jianhua Ran: Jiuzhai Valley National Park: Data-Driven Economic Growth and Ecological Preservation. Harvard Business School Case Study Database

## 17. Climate litigation: Suing on behalf of the future

Reading:

- THE STATUS OF CLIMATE CHANGE LITIGATION A GLOBAL REVIEW:  
<http://columbiaclimatelaw.com/files/2017/05/Burger-Gundlach-2017-05-UN-Envt-CC-Litigation.pdf>

## 18. Environmental regulatory pluralism

Reading:

- Rooij, Benjamin, Rachel E. Stern, and Kathinka Fürst. "The authoritarian logic of regulatory pluralism: Understanding China's new environmental actors." *Regulation & Governance* 10, no. 1 (2016): 3-13.
- Hofman, Peter S., Jeremy Moon, and Bin Wu. "Corporate social responsibility under authoritarian capitalism: Dynamics and prospects of state-led and society-driven CSR." *Business & Society* 56, no. 5 (2017): 651-671.

## 19. The role of business in protecting the environment (and the role of law)

Reading:

- Lynn S. Paine; Nien-he Hsieh; Lara Adamsons, Governance and Sustainability at Nike (A). Harvard Business School Case Study Database

## 20. Voluntary standards toward legal practices: visit from practitioner and/or fieldtrip

- TBD

## 21. Wrap-up/summary session for the section on using the law to protect the environment

## SECTION 3 COMPLIANCE AND DETERRENCE

### 22. Deterrence

Reading:

- Schell-Busey, Natalie, Sally S Simpson, Melissa Rorie, and Mariel Alper. 2016. "What Works? A Systematic Review of Corporate Crime Deterrence." *Criminology & Public Policy* 15 (2):387-416.
- Thornton, Dorothy, Neil Gunningham, and Robert A. Kagan. "General Deterrence and Corporate Environmental Behavior." *Law & Policy* 27, no. 2 (2005): 262-88.

### 23. Compliance

Reading:

- Van Rooij, Benjamin. *Regulating Land and Pollution in China, Lawmaking, Compliance, and Enforcement; Theory and Cases*. Leiden: Leiden University Press, 2006. Chapters 4 and 7.
- Kagan, Robert A., Neil Gunningham, and Dorothy Thornton. "Explaining Corporate Environmental Performance: How Does Regulation Matter?" *Law & Society Review* 37, no. 1 (2003): 51-90.

### 24. Environmental law and behavior

Reading:

- Cialdini, Robert B. 2003. "Crafting normative messages to protect the environment." *Current directions in psychological science* 12 (4):105-109.
- Cialdini, Robert B. 2007. "Descriptive social norms as underappreciated sources of social control." *Psychometrika* 72 (2):263-268. doi: 10.1007/s11336-006-1560-6.
- Cialdini, Robert B, Linda J Demaine, Brad J Sagarin, Daniel W Barrett, Kelton Rhoads, and Patricia L Winter. 2006. "Managing social norms for persuasive impact." *Social Influence* 1 (1):3-15
- Cialdini, Robert B., and Noah J. Goldstein. 2004. "Social influence: compliance and conformity." *Annual Review of Psychology* 55:591-621. doi: 10.1146/annurev.psych.55.090902.142015.

## SECTION 4 INTERNATIONAL ENVIRONMENTAL LAW

### 25. What is the role of international environmental law in protecting the environment?

Reading:

- Nanda, Ved, and George Rock Pring. *International environmental law and policy for the 21st century*. Martinus Nijhoff Publishers, 2012. Chapter 1 and 2  
*Citizen Suits in International Environmental Law: The North American Experience*, in [Making Law Work: Environmental Compliance and Sustainable Development](#) (2002).

### 26. Human Rights and the environment

Reading:

- Nanda, Ved, and George Rock Pring. *International environmental law and policy for the 21st century*. Martinus Nijhoff Publishers, 2012. Chapter 15
- Human Rights and the Environment: Rio+20: Joint Report OHCHR and UNEP  
<http://srenvironment.org/wp-content/uploads/2013/05/JointReportOHCHRandUNEPonHumanRightsandtheEnvironment.pdf>

### 27. The international (legal) environmental footprint of China's overseas investment

Reading:

- Environmental Risk Management Initiative for China's Overseas Investment  
<http://unepinquiry.org/wp-content/uploads/2017/09/Environmental-Risk-Management-Initiative-for-China---s-Overseas-Investment.pdf>

## **28. Final session**