

**MACQUARIE UNIVERSITY  
DIVISION OF LAW  
STUDY GUIDE**

<b>Year and Semester:</b>	<b>2008 Semester 1</b>
<b>Unit Code &amp; Unit Name:</b>	<b>LAW845/858 POLLUTION AND ENVIRONMENTAL REGULATION</b>
<b>Credit points:</b>	<b>LAW858 – 4 postgraduate credit points</b>  <b>LAW845 – 6 postgraduate credit points (applicable only to LLM students commencing studies before 2007)</b>
<b>Unit convenor:</b>	<b>Christopher Stone</b>

Students in this unit should read this study guide carefully at the start of semester. It contains important information about the unit. If anything in it is unclear, please contact a member of the teaching staff immediately.

## **1. ABOUT THIS UNIT**

### **Unit description**

The unit evaluates the efficacy of contemporary pollution control policies through an examination of international, Commonwealth, State and local government initiatives. It focuses on New South Wales and includes the history of pollution law and an examination of environmental protection legislation, criminal liability and enforcement will be considered. Specific topics include: corporate environmental reporting, contaminated land hazardous substances and due diligence.

The aim of the unit is to provide an understanding of pollution law and environmental regulation and the underlying environmental, social and economic objectives of the key legislation. A critical analysis is undertaken of the effectiveness of the current regulatory regime including reform proposals and options. Discussion and analysis of relevant case law is included.

## **2. TEACHING STAFF**

Christopher Stone  
Phone: (02) 9850 7111 (office) 0401 737 148 (mobile)  
Fax (02) 9850 7686  
Office: W3A 443  
Email: [christopher.stone@law.mq.edu.au](mailto:christopher.stone@law.mq.edu.au)

Consultations are by appointment.

### 3. CLASSES

This course is offered on an intensive basis only. For all students there is a **compulsory** on campus session on 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> May 2008. For the first two days students must attend 9am to 5pm. It is intended that the third day will provide students with the opportunity to discuss proposed research topics with the Convenor. A detailed schedule of the topics for the on campus session will be posted to the Blackboard CE6/WebCT site at the beginning of the semester.

In addition there will be four introductory seminars held in weeks 1 and 2. The first seminar will be on Thursday 28<sup>th</sup> February at 10am. The seminars will cover background to this Unit and introduction to pollution law. For **external students** these orientation sessions are optional but highly recommended. For **internal intensive** students they are **compulsory**. These seminar sessions will be held in **weeks 1 and 2** of term only. For further information regarding the seminar sessions please contact the Unit Convener.

**PLEASE NOTE: ALL INTERNATIONAL STUDENTS MUST ENROL AS INTERNAL STUDENTS TO COMPLY WITH VISA REQUIREMENTS.**

### 4. REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

#### Prescribed:

Course Materials: Readings in Pollution and Environmental Regulation, Volumes 1 & 2, edited by Zada Lipman. Available from University Co-Op Bookshop

#### Recommended Reading:

Lyster R, Lipman Z, Wiffen G et al, *Environmental and Planning Law in NSW*, (2007) Federation Press. The required reading has been extracted in the course materials.

Lipman and Bates, *Pollution Law in Australia*, (2002) Butterworths.

#### Other Books

In addition to the above there are a range of textbooks available from the university library which you may find useful for the research essay or if you wish to do some extra reading on a particular topic. Please note that in consulting these texts they should be read carefully because subsequent developments may mean the text no longer reflects current law.

For students new to the study of law in Australia we recommend the following text:

Chisholm and Nettheim, *Understanding Law: An introduction to Australia's Legal System* (2007) Butterworths (KU68 .C48 2007)

#### Legal Services

*Environmental Responsibilities Law*, 2 Loose Leaf Volumes, Law Book Co.

*Local Government Planning and Environment*, Loose Leaf Service, Vols. A, B & C, Butterworths.

Most loose leaf services receive a student discount rate of 50%.

#### Journals

*Environmental and Planning Law Journal*, Law Book Co.  
*Local Government Law Journal*, Law Book Co.

Students should purchase the Readings in Pollution and Environmental Regulation from the Co-op Bookshop. Recommended material need not be purchased but must be read. These works will be held on special reserve at the Library and will also be available for consultation at my office (W3A 441). Case law is reported in the Local Government and Environment Reports of Australia. Case law and legislation can be found on line at [www.austlii.edu.au](http://www.austlii.edu.au)

Students should also consult the *Environmental and Planning Law Journal* and *Local Government Law Journal*. Both journals are held in the Law Library. The Readings in Pollution and Environmental Regulation contain most of the subject matter relevant to the course.

## 5. UNIT WEB PAGE

There is a Blackboard CE6 (formerly WebCT) site for this unit at <http://learn.mq.edu.au>. This study guide, the on-campus reading guide and the assignment questions will be posted to the website. Additional resources (including the problem solving exercises), readings and other materials will also be on the site. Students should ensure they log in and check the site at least once a week.

## 6. LEARNING OBJECTIVES

- To give students an in-depth understanding of the principles and policies underlying pollution law, and conceptual frameworks for analysing the adequacy of our legal system in this field.
- To facilitate an understanding of the historical, philosophical and contextual background of pollution law as well as the current system of pollution law in NSW.
- To encourage a critical evaluation of the current system.

## 7. GENERIC SKILLS

In addition to the discipline-based learning objectives, all academic programs at Macquarie seek to develop students' generic skills in a range of areas. One of the aims of this unit is that students develop their skills in the following:

*Communication skills;*  
*Critical analysis skills;*  
*Problem-solving skills;*  
*Interdisciplinary skills.*

## 8. TEACHING AND LEARNING STRATEGY

- The unit is primarily taught by distance education. Students should purchase the Course Materials from the co-op bookshop on campus. There will be two initial seminars that provide background and orientation to the Unit. These are compulsory for internal students but optional for external students. **All students must attend a seminar-style compulsory**

**on-campus session.** The on campus session will be conducted on the basis of interactive seminars on each topic area. A mini lecture may be given on each topic but the focus will be upon class discussion of the topic and course materials.

- Students are expected to read in advance for the on-campus session and be prepared to participate in tutorial discussion. Areas to be read are listed in the attached on-campus reading guide. Students will also be required to prepare answers to problem solving exercises prior to the on-campus session.

## 9. ASSIGNMENTS

### Submission of Assignments

Assignments should be submitted in one of three ways:

1. External assignments may be sent by Australia Post, or by courier but must be despatched by the due date. The cover of the assignment should be date stamped by the post office before dispatch by mail indicating the date of dispatch.
2. Internal intensive students should lodge their assignments in the law postgraduate assignment box in W3A room 341. Do not push assignments under your tutor's door or post them in your tutor's pigeon hole in the Law Division's mail room. These methods of delivery are not secure.
3. Students may email assignments on the submission date to the Law PG box which will record date, time and name of each email and will provide a backup copy to the Division: Email to: [postgrad@law.mq.edu.au](mailto:postgrad@law.mq.edu.au). The email should be cc'd to the Unit Convener.

Students are advised to always make and retain a backup copy of all pieces of work submitted. It is University policy to place upon the students the onus of producing a copy of work which goes astray. **All students should email an electronic copy of their assignment to the Unit Convener to avoid discrepancies about submission time and date.**

### Word Length

Word length of assignments should be indicated. Word limits should be adhered to. The word length indicated for the assignments is exclusive of footnotes and Bibliography. The word limit should not be exceeded by more than 10%. Excessively long assignments will be penalised.

### Format/Citations/Footnotes/Bibliography

Assignments should be typed in **12 point font and double spaced**. All pages must be firmly stapled or pinned together. All assignments must be footnoted and have a comprehensive Bibliography. Students should use the proper legal citation method in all their written work according to the Australian Guide to Legal Citation. Copies of this guide can be downloaded from the University of Melbourne Web site <http://mulr.law.unimelb.edu.au/aglc.asp> or can be purchased from the Co-op Bookshop. For a model look at any issue of the *Macquarie Journal of International and Comparative Environmental Law* which is available in the library and online at <http://www.law.mq.edu.au/html/MqJICEL/about.htm>. Also consult reference books such as Enright, C, *Studying Law* and Glanville Williams *Learning the Law*.

### Late Submission

Illness or serious misadventure may be sufficient excuse, preventing submission on time, but complete details must be notified to tutors, *in writing, before the due date*, and be supported by medical certificate or other appropriate documentation.

Pressure of work is generally *not* an acceptable ground for delay.

If an extension of time is granted by a tutor, then the assignment must be submitted within this time. An excuse is good for one assignment only; there can be no chain effect.

In cases where illness or misadventure is likely to affect more than one assignment, students are advised to apply for a withdrawal (W) grade. After the end of the eighth week, a case must be made out for withdrawal without penalty. Requests for withdrawal should be directed to the Assistant Registrar, Postgraduate Studies. Your tutor must be separately notified in writing.

### **Penalties for late submission**

Where an assignment is 1-6 days late it will incur a 10% penalty. 7-13 days late will incur a 20% penalty. Assignments submitted after two weeks from the due date will only be accepted in exceptional circumstances.

### **Lost assignments**

Assignments are sometimes lost in transit. Students are thus advised to always make and retain a backup copy of all pieces of work submitted. It is University policy to place upon the students the onus of producing a copy of work which goes astray. Do not push assignments under your tutor's door or post them in your tutor's pigeon hole in the Law Division's mail room. These methods of delivery are *not* secure. Students should send their assignments to the Centre for Open Education or they may be lodged in the law postgraduate assignment box in W3A room 341.

## **10. ASSESSMENT**

### **LAW 858**

Class Participation:	10%	
Assignment 1:	40%	Due date 2/5/2008
Research Essay:	50%	Due date 16/6/2008

### **LAW 845**

Class Participation:	10%	
Assignment 1:	30%	Due date 2/5/2008
Research Essay:	60%	Due date 16/6/2008

External students are assessed for class performance at the on-campus session for 10% of their total mark. Further assessment is by way of assignment. For students enrolled in Law 858, the first assignment is to be approximately 2500 words and the Research Essay 3500 words. For students enrolled in LAW845, the first assignment is to be approximately 2500 words in length and the Research Essay 6500 words.

**Assignment 1:** All students will be required to answer one of two set questions. These questions are attached to this Study Guide.

**Research Essay:** The research essay is to be on any topic drawn from the themes covered in the course, subject to approval by the Unit Convenor. A short abstract of your proposed topic of no more than 200 words should be submitted to the unit convener no later than 5 May 2008 for approval.

**Class participation:** As assessment for this unit also includes class participation students should ensure they have completed the required reading for the on campus session, and be prepared to discuss this material in class. You will not be awarded class participation just for attending the on campus session. Class participation will be assessed on the basis of your contribution to discussion in relation to the set materials and tutorial questions as well as the topics canvassed in class more generally. Class participation will also be assessed on the basis of the quality of a student's contribution to discussion.

## 11. RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OBJECTIVES

Many fundamental questions and issues will be raised in this unit and a detailed consideration of theoretical issues, "command-and-control" strategies, market incentives, current perspectives, up-to-date readings and case law are important. There is rarely a "right" answer to these fundamental questions. We expect that you will have a good understanding of the theoretical issues and the legal framework. Skills required include: clear issue identification, ability to apply the law to a variety of factual situations and good analytical and critical ability.

## 12. PLAGIARISM

The University defines plagiarism in its rules: "Plagiarism involves using the work of another person and presenting it as one's own." Plagiarism is a serious breach of the University's rules and carries significant penalties. You must read the University's policies and procedures on plagiarism. These can be found in the *Handbook of Undergraduate Studies* or on the web at: <http://www.student.mq.edu.au/plagiarism/>

The policies and procedures explain what plagiarism is, how to avoid it, the procedures that will be taken in cases of suspected plagiarism, and the penalties if you are found guilty. Penalties may include a deduction of marks, failure in the unit, and/or referral to the University Discipline Committee.

Macquarie University holds a licence to the plagiarism detection software, turnitin®. This software may be used at the discretion of the Convenor, and electronically compares your work to that of your classmates, previous students from Macquarie and other universities, material available on the Internet, and both freely available and subscription-based electronic journals. You can read more about turnitin® at [www.copyright.mq.edu.au/plag.html](http://www.copyright.mq.edu.au/plag.html)

## 13. UNIVERSITY POLICY ON GRADING

The University requires all Divisions to adhere to a policy relating to the distribution of grades across high distinction, distinction, credit and pass grades. This means that on occasion a student's raw mark for a unit (ie, the total of their marks for each assessment item)

may not be the same as that which they receive on their transcript. This is because the total raw mark may be scaled up or down so that the grades of all students in each unit sit within the distribution bands set down by the University. The policy does not require that any specific number of students are to be failed in any unit.

## **14. SCHEDULE OF TOPICS**

A detailed schedule for the on campus session will be uploaded to the Blackboard CE6 site at the beginning of the semester. A list of the course readings is set out below:

### **CHAPTER 1 : THE HISTORICAL BACKGROUND TO REGULATION**

1. Gunningham, N *Pollution, Social Interest and the Law*, Martin Robertson Press, Great Britain, 1974, pp 30-34, 55-58.
2. Carson, W G, "The Conventionalization of Early Factory Crime" (1979) 7 *International Journal for the Sociology of Law* 37-59.
3. Sayre, F B, "Public Welfare Offences", (1933) 33 *Columbia Law Review* 55.

### **CHAPTER 2 : REGULATION AND ENVIRONMENTAL CRIME**

1. Gunningham, N, *Pollution, Social Interest and the Law*, Martin Robertson Press, Great Britain (1974) pp 65-73.
2. Hawkins, R, *Environment and Enforcement: Regulation and the Social Definition of Pollution*, Clarendon Press, Oxford, 1984, pp 1-15.
3. Hughes et al, *Environmental Law and Policy*, 2nd ed, Edmund Montgomery Publications, Toronto 1998, pp 331-350.
4. Grabosky, P and Braithwaite, G, *Of Manners Gentle*, Oxford, 1986, pp 38-49.
5. "Infringements and Prosecutions" (2003-04) *NSW DEC Annual Report* pp 152-157.

### **CHAPTER 3 : THE ROLE OF THE COMMON LAW**

1. Lipman, Z & Lyster R, Extract from Ch1, *Environmental Law in NSW*, Lyster et al, Federation Press (2007).
2. Adler, J, "Heated Nuisance Suits" (2004) [www.techcentralisation.com/072704C.html](http://www.techcentralisation.com/072704C.html)

### **CHAPTER 4 : FEDERAL ENVIRONMENT PROTECTION: THE ROLE OF THE COMMONWEALTH**

1. Lipman, Z & Lyster R, Extract from Ch1, *Environmental Law in NSW*, Lyster et al, Federation Press (2007).

2. Fowler, RJ, "Law and Policy Aspects of National Standardisation" in *Environmental Outlook No. 2*, Boer B, Fowler R, Gunningham, N (eds), Federation Press, 1996.
3. "NEPM s and their Administration" (2005) [www.ephc.gov.au](http://www.ephc.gov.au)

#### **CHAPTER 5 : NSW POLLUTION LEGISLATION**

1. Lipman, Z, Extract from Ch 5, *Environmental Law in NSW*, Lyster et al, Federation Press (2007).
2. Lipman, Z, "Corporate and Corporate Officer Liability for Pollution" in *Corporate Management in Practice*, Lexis Nexis Butterworths (200%) Vol 2 No 7, p 94.
3. Robinson, D, "POEO Act Environment Protection Tools in Practice 1999-2000" (2000) unpublished paper.
4. Hain, M. "The Effectiveness of the Courts in achieving Goals of Environmental Protection Legislation" (2001) 18 *EPLJ* 319.

#### **CHAPTER 6 : CORPORATE ENVIRONMENTAL REPORTING**

1. Bubna-Litic, K, et al, "Walking the thin green line: The Australian experience of Corporate Environmental Reporting" (2001) 18 *EPLJ* 339.
2. Bubna-Litic, K and Williamson, I, "The thin green line: embedded" (2004) 21 *EPLJ* 466.

#### **CHAPTER 7 : WASTE, HAZARDOUS SUBSTANCES AND CONTAMINATED LAND**

1. Lipman, Z, Extract from Ch 6, *Environmental Law in NSW*, Lyster et al, Federation Press (2007).

#### **CHAPTER 8 : CHANGING STRATEGIES: THE MOVE TO MARKET INCENTIVES**

1. Lipman, Z & Lyster R, Extract from Ch1, *Environmental Law in NSW*, Lyster et al, Federation Press (2007).
2. Bernstein, J, "Alternative Approaches to Pollution Control and Waste Management", World Bank, Washington, 1994.
3. Lipman, Z & Lyster R, Extract from Ch1, *Environmental Law in NSW*, Lyster et al, Federation Press (2007).
4. Gillies, P, and Lipman, Z, "Producing Electricity from renewable energy sources – Fiscal measures in Australia" (2004).

5. “Overview of the NSW Greenhouse Gas Abatement Scheme”  
[www.greenhousegas.nsw.gov.au](http://www.greenhousegas.nsw.gov.au)
6. “European Union (Progress on Greenhouse gas emissions trading)”  
[www.nrtee-nrtee.ca/EmissionsTrading/en/overview\\_countries\\_European-Union.htm](http://www.nrtee-nrtee.ca/EmissionsTrading/en/overview_countries_European-Union.htm)
7. Butzengeiger, S, and Michaelowa, A, “EU Emissions Trading Scheme – Issues And Challenges” (2004) *Intereconomics* 116.

## **CHAPTER 9: BEYOND COMPLIANCE – THE ROLE OF ENVIRONMENTAL MANAGEMENT SYSTEMS**

1. Commentary – Z Lipman
2. Gunningham, N, “From Adversarialism to Partnership: ISO 14000 and Regulation” (1996) unpublished paper, ISO 14000 Conference ANU.
3. Sullivan, R, “Environmental Management Systems: Theory, Practice and Implications for Law Policy” (2001) 18 *EPLJ* pp 594-603.

**MACQUARIE UNIVERSITY**

**DIVISION OF LAW**

**ASSIGNMENT NO 1: LAW 845/858**

**POLLUTION AND ENVIRONMENTAL REGULATION**

**Due Date: 2 May 2008**

**Word Length: 2,500 words**

**Weight:       LAW 858 40%**  
**LAW 845 30%**

**STUDENTS SHOULD ANSWER QUESTION 1 OR QUESTION 2. BOTH PARTS OF THE QUESTION MUST BE ANSWERED.**

1.           " ... the pollution laws, like those outlawing a number of other business activities, differ from other laws in origin, philosophy, enforcement, and in the sanctions used to punish violators." (N Gunningham, (1974) *Pollution, Social Interest and the Law*, Martin Robertson Press, Great Britain at 65).

Do you agree with this statement? How did this approach originate and what impact has it had on the regulation, prosecution and judicial enforcement of environmental crime?

**OR**

2.       In *Sherraz v De Rutzen* [1895] 1 Q B 918 at 922, Wright J described certain acts as "not criminal in any real sense, but ... which in the public interest are prohibited under a penalty".

This definition has been approved by many Australian courts, and has frequently been applied to pollution offences. How did this approach originate and what impact has it had on the regulation, prosecution and judicial enforcement of environmental crime?

These assignment questions do not require any research outside the Readings for Pollution & Environmental Regulation, although the legislation should be consulted. Your answer should also demonstrate a thorough knowledge of the theoretical material in the Readings and focus upon this material. However, case law may be cited where relevant.



