
Environmental Initiatives
at Harvard Law School

A Summary of Key Activities

Fall
2020



H I S | ENVIRONMENTAL &
ENERGY LAW PROGRAM



Emmett Environmental
Law & Policy Clinic
HARVARD LAW SCHOOL



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“What we need is government adopting smart policy, that works with business in a coherent and predictable way, all marching in the right direction, which is to an energy transition, globally, that will allow us to stave off the worst risks of climate change. I believe that’s still possible, and I tell that to my law students and I hope they’re invigorated.”

Jody Freeman, Archibald Cox Professor of Law, and Founder and Director of the Environmental & Energy Law Program, Harvard Law School

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1.0

Message from Jody Freeman

Archibald Cox Professor of Law, and Founder and Director, Environmental & Energy Law Program, Harvard Law School



I am delighted to share this report on our environmental and energy initiatives at Harvard Law School. Climate change, clean energy, public health, and sustainability have never been more important. Public demand for progress is intensifying, and now more than ever is linked to calls for social justice. COVID-19 has underscored our vulnerability and exposed what happens when we fail to plan for, manage, and mitigate dangerous risks.

To make the necessary shifts, both in the US and globally, we will need technological innovation, policy innovation, and legal innovation. That's how we contribute — by helping to knock down legal barriers to progress, rethinking outdated legal and regulatory systems, and turning policy ideas into action.

When we launched the Environmental Law Program in 2006, our goal was to do three things: train the next generation of environmental law leaders; produce the best research and legal analysis on the most important questions to help policymakers address climate change, shift to cleaner energy, and protect public health; and serve as a go-to resource for experts, the media, and the public as they try to understand legal and political developments in this area.

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EELP white papers, articles, and real-time analyses published since September 2019

I'm happy to report we have succeeded on all counts. Our graduates work in the most influential and prestigious law firms, non-profits, advocacy groups, and government agencies. Our scholarly research is among the most cited in the nation. Our policy work has helped to shape debates and influence key decision-makers. Our [regulatory rollback newsletter](#) and other email updates go to thousands of subscribers, including reporters, environmental NGOs, and congressional staffers. Multiple media outlets — including CNN, the *Washington Post*, the *New York Times*, and CNBC — have featured our work prominently in their coverage of the Trump administration.

Our outstanding faculty is led by me and Richard Lazarus, Emmett Clinic Director Wendy Jacobs, and EELP Executive Director Joe Goffman, with a team of superb staff attorneys and fellows. We have unparalleled experience in the public and private sectors, having served in the Department of Justice, Congress, White House, EPA, and at leading law firms and non-profits.

Our curriculum is broad and deep, including courses in environmental and administrative law, climate, water, energy, public lands, natural resources, Indian law, food law, and animals and the law; reading groups and seminars; and capstone classes such as Environmental Law and the Supreme Court. Students can take our excellent environmental law clinic, where they litigate and advocate for clients in live cases — drafting briefs, preparing testimony, analyzing rules and legislation, and recommending litigation or regulatory strategies. They can also join our ongoing projects at EELP, contributing to our white papers, journal articles, regulatory rollback trackers, media summaries, blogs, and podcasts, as well as publish work of their own. Students can connect socially and intellectually by joining the Environmental Law Society and the Harvard Environmental Law Review, the best environmental law review in the nation.

Our program was built with a big tent philosophy: whether you are a traditional environmentalist, a clean tech entrepreneur, or a military veteran who sees climate and national security as linked, we can help you. We hope you enjoy this snapshot of our program and share our excitement for our work.



Jody Freeman, Archibald Cox Professor of Law, and Founder and Director of the Environmental & Energy Law Program, Harvard Law School

2.0 Environmental & Energy Law Program

Founded in 2006, the Environmental and Energy Law Program (EELP) is a research program within Harvard Law School. We conduct cutting-edge legal analyses to improve environmental and climate outcomes, and to support clean energy. We train students to make practical contributions to environmental law and policy.

1,100+

Regulatory Rollback
Tracker subscribers

By identifying strategies for policymakers and the private sector, we help them overcome obstacles to environmental protection; facilitate the transition to a low-carbon, sustainable future; address the disruptive effects of climate change; and protect public health and welfare from environmental degradation.

We educate experts, decision-makers, and advocates who seek to address climate change and its effects, counter public health threats posed by pollution, and steward America's natural resources. We educate the public by serving as an expert resource for media and providing credible, accessible analyses on online platforms.

2.1 Our Team

Professor Jody Freeman is our founder and faculty director, Professor Richard Lazarus is the co-faculty director, and Joe Goffman is our executive director. They're supported by Electricity Law Initiative Director Ari Peskoe, Communications & Outreach Director Robin Just, Staff Attorneys Hana Vizcarra and Caitlin McCoy, our Legal Fellows Laura Bloomer and Hannah Perls, Program Administrator Kathy Curley, Communications Associate Sara Levy, and Communications Coordinator Kyra Davies.

[See our bios here.](#)

EELP Team Members



Jody Freeman

**Founder and
Faculty Director**



Richard Lazarus

**Co-faculty
Director**



Joe Goffman

**Executive
Director**



Ari Peskoe

**Electricity Law
Initiative Director**



Robin Just

**Communications &
Outreach Director**



Caitlin McCoy

**Staff
Attorney**



Hana Vizcarra

**Staff
Attorney**



Laura Bloomer

**Legal Fellow
(outgoing)**



Hannah Perls

**Legal
Fellow**



Kathy Curley

**Program
Administrator**



Sara Levy

**Communications
Associate**



Kyra Davies

**Communications
Coordinator**

Throughout the 2019-2020 academic year, we employed 22 student research assistants (RAs). The RAs are valued members of our team, who increased our ability to provide timely legal analyses on breaking environmental and energy news. Working with such a large group of student researchers has enabled us to leverage our resources significantly, and provides them with hands-on training in their interest areas. A self-selected and mission-driven group of law students, they bring to us high-quality and timely work that elevates each of our major project areas.

2.2 Environmental Governance Project

We defend existing environmental standards and EPA's core capacities from being dismantled through regulatory and legislative rollbacks in our [Environmental Governance Project](#). We analyze efforts to weaken the Clean Air Act and other environmental statutes through adverse legal interpretations, and are starting to identify the priorities for the new administration on how to rebuild crucial standards and capacities after the 2021 presidential inauguration. Our [Regulatory Rollback Tracker](#), [EPA Mission Tracker](#), and legal analyses and outreach efforts inform the press, policymakers, and the public. As the litigation challenging the Trump administration's rule rollbacks progresses, demand is growing for our analyses of the complex legal issues underlying the rollbacks and how the Biden administration might confront them.

Our [Regulatory Rollback Tracker](#) documents the Trump administration's weakening of environmental and public health rules and policies. We send biweekly emails with deregulatory updates to a list of 1,100+ [subscribers](#), which includes reporters, environmental NGOs, and congressional staffers. Multiple media outlets, including the *New York Times* and CNBC, have featured the tracker prominently in their coverage of the administration, most recently the *Times* in a [July 2020 story](#) that also quoted Staff Attorney Hana Vizcarra.

Our [EPA Mission Tracker](#) monitors administration initiatives that compromise the fundamental capacity of EPA to carry out its public health and environmental protection mission. This tracker features briefing papers that explain the importance of each initiative, and will serve as a comprehensive resource for a future administration needing to understand the full sweep of changes that have occurred inside the agency and how EPA functions.

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EELP legal analyses, podcasts, posts, and op-eds on the Clean Car Rules



2.2.1 Beyond Tracking: Rules In-Depth

In addition to tracking federal regulatory developments, our environmental governance work involves deeper analyses of the implications of these changes. White papers by EELP staff and expert guest authors have addressed [implementation](#) of the updated Toxic Substances Control Act; innovative strategies that future administrations can use to ensure [compliance with environmental rules](#) and make rules more effective; EPA's [many changes](#) to the Clean Air Act's New Source Review program; the [constitutionality](#) of California's cap-and-trade agreement with Quebec; and how the Trump administration's legal approach in the final Affordable Clean Energy Rule will [shape how it defends the rule in court](#). We published analyses of EPA's proposed rule [limiting the science it uses](#), its proposed changes to how it [calculates regulatory costs and benefits](#), and the [Congressional Review Act](#). Below are specific examples of regulatory topics.



2.2.2 California's Clean Car Program

Among the attacks on environmental protection by the Trump administration, none more urgently demands a response than its efforts to retroactively deny California's authority to continue its low greenhouse gas and electric vehicle program, and its [move to take away other states' ability](#) to follow California's standards. The preemption and withdrawal of California's waiver is the central element of the [administration's phase one rule](#) from September 2019. The second rule, finalized in April 2020, [weakens fuel economy and greenhouse gas emissions standards](#) for automobiles and light trucks. We are [following](#) the litigation challenging both rules as well as California's Framework Agreements on Clean Cars with five automakers.



2.2.3 Clean Power Plan and Affordable Clean Energy Rule

Our Executive Director Joe Goffman consulted with senior staff in a state attorney general's office in anticipation of challenging EPA's Repeal of the Clean Power Plan and Affordable Clean Energy Rule. He and Staff Attorney Caitlin McCoy wrote a [detailed legal analysis](#) of the two actions.



2.2.4 Offshore Energy Regulation

In May, staff attorney Hana Vizcarra published “[Deepwater Horizon Ten Years Later: Reviewing agency and regulatory reforms](#),” a paper that discusses the reforms undertaken after the 2010 spill and how current deregulatory efforts could undermine those reforms. She is also overseeing the creation of a body of work around offshore wind development.



2.2.5 The Future of EELP’s Governance Work

We’ve recently updated both trackers to better account for the most common stages of the regulatory process, whether rules are still pending, final, or being litigated. The Regulatory Rollback Tracker now includes information about the stage of each rulemaking, rather than tracking comment periods. Our student research assistants have been key in helping us build and run our trackers.

We complement the trackers with in-depth [interviews](#) of former EPA officials and [other experts](#) on [our podcast](#) to provide nuanced insight into the impacts of rule rollbacks and the ways in which seemingly benign changes in agency practices can disable EPA’s work to curb pollution. This fall, we have expanded the scope of our Mission Tracker work and are looking at how the Department of the Interior (DOI)’s functions have been degraded. We published [a report on how the current administration has impacted the DOI’s public lands mission](#), based on our own research and interviews with nearly 20 former Interior officials. The report includes analysis of the DOI’s actions over the past four years, examples of where a second-term Trump administration would have focused its attention, and recommendations for the incoming Biden administration seeking to rebuild the DOI’s core capacities.

We also provide legal insight to state and local government actors and environmental NGOs as they develop their litigation strategies to challenge these rollbacks. We have discussed our publicly available legal analyses with them as they develop their strategy and arguments in their appellate briefs, and actions in trial courts.



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EPA Mission Tracker posts
since September 2019

2.2.6 Summary of the Past Year

Publications

1. [EPA's Benefit-Cost Proposal in the Context of PM Pollution Regulation](#), Joe Goffman and Laura Bloomer, July 2020
2. [The Legal Dynamics of Local Limits on Natural Gas Use in Buildings](#), Caitlin McCoy, June 2020
3. [The Congressional Review Act's Legal Uncertainties](#), Kevin Chen (JD 2020), May 2020
4. [How to Undo the Trump-Era Regulatory Rollbacks to Redo Environmental Protection](#), Cole Jermyn (JD 2021) and Laura Bloomer, April 2020
5. [Backgrounder: Appropriate & Necessary Finding – Mercury & Air Toxics \(MATS\)](#), April 2020
6. [Comprehensive Car Rules Overview](#), April 2020
7. [Three Years After – Where Does Implementation of the Lautenberg Act Stand?](#), Kevin McLean, February 2020
8. [How Statutory Interpretation of the Clean Air Act Serves the Trump Administration's Deregulatory Agenda](#), Joe Goffman and Laura Bloomer, February 2020
9. [Next Generation Compliance: Environmental Regulation for the Modern Era](#), Cynthia Giles, January 2020
10. [EPA's House of Cards: the Affordable Clean Energy Rule](#), Caitlin McCoy and Joe Goffman, October 2019
11. [Analysis of the Regulation and Deregulation of US Ocean and Fisheries Policies](#), Hana Vizcarra with Laura Bloomer, August 2019

CleanLaw Podcasts

1. Joe Goffman with Francesca Dominici on the [Intersection of Air Pollution, Coronavirus, and Black Communities](#), August 2020
2. Hana Vizcarra and Kevin McClean on the [Toxic Substances Control Act](#), July 2020
3. Caitlin McCoy speaks with Bethany Davis Noll about [Clean Car Rules](#), May 2020
4. Jody Freeman speaks with Alex Griswold about [Trump Rollbacks and Staying Optimistic](#), April 2020
5. Laura Bloomer speaks with Gretchen Goldman about [EPA Science Advisory Panels](#), December 2019

Quotes in the Media & Appearances

1. [Trump's environmental rollbacks: A four-year tide of regulatory change](#), Caitlin McCoy in the *Christian Science Monitor*, August 2020
2. [Will Trump's methane rule rollback survive in court?](#), Hana Vizcarra in *E&E News*, August 2020
3. [Trump, Biden Square Off Over Environmental Regulations](#), Joe Goffman in the *Wall Street Journal*, July 2020
4. [How Joe Biden Could Undo Trump's Damage to Environment](#), Jody Freeman in *TIME*, July 2020
5. [Trump eases environmental rules during pandemic](#), Laura Bloomer in the *Financial Times*, June 2020
6. [Trump and EPA Have Been Making Controversial Decisions Over America's Air Quality During Coronavirus Pandemic](#), Joe Goffman in *Newsweek*, June 2020
7. [Major Automakers Choose Not To Back Trump Administration On Fuel Economy Standards Rollback](#), Caitlin McCoy in *Forbes*, June 2020
8. [Gutting fuel economy standards during a pandemic is peak Trump](#), Caitlin McCoy in *Vox*, April 2020
9. [Democratic senators urge Trump administration to halt environmental rollbacks during pandemic](#), Caitlin McCoy on CNN.com, April 2020
10. [EPA's Recent Rollbacks Raise Public Health Worries for Vulnerable Americans](#), Joe Goffman in *Audubon Magazine*, April 2020
11. [Several States, Environmental Groups Vow to Sue Over Car Pollution Rollback](#), Caitlin McCoy in *Scientific American*, April 2020
12. [Trump Targets the Heart of US Environmental Law](#), Caitlin McCoy in *Sierra Club Magazine*, January 2020
13. [One Planet: The Trump Administration's Environmental Rollbacks](#), Caitlin McCoy on KALW, January 2020
14. [Remarks at the CWRU Law Symposium](#), Joe Goffman, October 2019
15. [Trump's long-term plan to destroy Obama's green legacy](#), Caitlin McCoy in the *Independent*, September 2019

2.3 The State and Local Climate Strategies Project

The [State and Local Climate Strategies Project](#) supports and advises state and local governments as they pursue greenhouse gas reduction and adaptation strategies, by helping to ensure their policies are legally authorized and soundly designed to withstand legal challenge.

To make the shifts necessary, both in the US and globally, we will need technological innovation, policy innovation, and legal innovation. That's how we contribute — by helping to knock down legal barriers to progress, rethinking outdated legal and regulatory systems, and turning policy ideas into action, Harvard Law School, with our supremely talented students, and awesome faculty and staff, can participate in building the legal infrastructure necessary for a sustainable 21st century.

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EELP legal analyses, podcasts, and posts on ocean resource management and the impacts of climate change on the oceans

States, counties, and cities are operating as climate policy laboratories given the lack of federal action to reduce greenhouse gas emissions and active efforts to undo existing climate policies. We produce analyses that map out the legal landscape that state and local policymakers must navigate in key sectors within their authority to achieve greenhouse gas reductions and facilitate climate change adaptation. Our analyses are also available for other stakeholders such as environmental NGOs and community groups, which can use them to inform advocacy strategies rooted in a strong understanding of the steps states and local governments can take under the law.

Federal policy draws on state and local programs, evaluating what works and how it can be adapted at a federal level or further facilitated with federal funding. We are preparing to seamlessly move from studying how to increase state and local efforts to reduce emissions to advising how successful state initiatives can be scaled up to — or integrated into — federal policy where appropriate or expanded in coordination with renewed federal efforts.

2.3.1 Summary of the Past Year

Publications

1. [The Legal Dynamics of Local Limits on Natural Gas Use in Buildings](#), Caitlin McCoy, June 2020
2. [US City Climate Commitments: Obstacles and Opportunities in the Building Sector Post-Paris Agreement](#), Caitlin McCoy, December 2019

CleanLaw Podcasts

1. [Caitlin McCoy and Aladdine Joroff on the Recent Mass AG Decision on Local Natural Gas Usage Laws](#), September 2020
2. [Caitlin McCoy speaks with Bethany Davis Noll about Clean Car Rules and the California Waiver](#), May 2020

Quotes in the Media & Appearances

1. [Utility giant sues Calif. over gas bans, climate plan](#), Caitlin McCoy in E&E News, August 2020
2. [As natural gas bans go national, can cities fill the gap?](#), Caitlin McCoy in E&E News, August 2020
3. Caitlin McCoy presented climate solutions for the building sector to the Climate Action and Resilience Committee for the County of Maui at its [meeting](#) on August 17, 2020. She shared lessons from the evolution of New York City's building energy policies over the last 10 years, tailored to Hawaii law and Maui County's authority over buildings.
4. Caitlin McCoy was on the New Directions in Environmental Law 2020 Conference panel, "[Cities and Emissions Mitigation: From the Paris Climate Agreement to the Green New Deal](#)" at Yale Law School and Yale School of Forestry and Environmental Studies in February 2020.



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Publications & podcasts since August 2019 on private-sector governance and innovation

2.4 The Private Sector Governance & Innovation Project

The [Private Sector Governance & Innovation Project](#) produces informed legal analyses to identify and promote opportunities for private companies to adopt positive environmental policies and manage climate-related risks while pursuing their business priorities and remaining competitive.

We analyze trends in corporate responses to the clean energy transition and the physical risks of climate change. The work we do identifies emerging areas of friction as the private sector wrestles with the impacts of climate change, whether legal and regulatory reforms or rising seas. We analyze the key challenges to turning aspirations and commitments into actionable policies and identify opportunities for near-term progress within existing legal frameworks.

We engage with industry, regulators, policymakers, and other stakeholders to resolve legal choke points and communicate the results of our work. We also interact with a broader audience through engagement with the media and our online platforms.

We work in three primary areas: 1) [financial disclosure and risk management](#), 2) [the future of energy](#), and 3) [sea level rise and oceans](#). In each we assess legal and policy issues that influence private sector actions and how best to encourage more forward-thinking actions to address climate change concerns. This involves consideration of the interplay between government (at all levels), communities, and the companies that work in them.

Staff Attorney Hana Vizcarra, EELP's private-sector project lead, makes regular media appearances. She was quoted prominently in the *New York Times*' July 2020 [rollback piece](#), the *Financial Times*, and *Scientific American*. Hana regularly appears in [Bloomberg](#) and [E&E News](#), and was a guest on NPR's Allegheny podcast, [Trump on Earth](#), and on [Wyoming Public Radio](#).

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EELP legal analyses of
Executive Orders

2.4.1 Summary of the Past Year

Publications

1. [Climate Change is Changing the Practice of Law Beyond Environmental Law](#), Hana Vizcarra, July 2020
2. [BOEM predicts offshore wind boom, but where does the industry stand today?](#), Martin Levy (JD 2020), July 2020
3. [SEC's Proposed Amendment to Rule 14a-8 May Make Life More Difficult for Climate Investors](#), Martin Levy (JD 2020), June 2020
4. [Vineyard Wind is One Step Closer to Construction: Will Anything Else Get in the Way?](#), Martin Levy (JD 2020), June 2020
5. [Deepwater Horizon Ten Years Later: Reviewing agency and regulatory reforms](#), Hana Vizcarra, May 2020
6. [Socializing the CZMA: How Redefining "Community Resilience" Is Changing Coastal Management](#), Hannah Perls, May 2020
7. [Changing Expectations for Financial Disclosure of Climate-Related Information](#), Hana Vizcarra, published in Columbia Law School's Blue Sky Blog, May 2020
8. [When Industry Support for Stricter Regulation is Good Business: Considering the Car Rules and Methane Standards](#), Martin Levy (JD 2020), April 2020
9. [Regulatory Activity and Legal Liabilities Affecting Management of Financial Climate Risks](#), Hana Vizcarra, March 24, 2020
10. [Offshore Wind Development: Federal Permitting Program Challenges](#), Martin Levy (JD 2020), March 2020
11. [Troubled Waters: Coastal Avulsion, A State Survey](#), Ari Sillman (JD 2021), March 2020
12. [The Reasonable Investor and Climate-Related Information: Changing Expectations for Financial Disclosures](#), Hana Vizcarra, published in the February 2020 edition of the Environmental Law Reporter
13. [Understanding the New York v. Exxon Decision](#), Hana Vizcarra (post discussing the recent dismissal of the securities fraud suit brought by the New York Attorney General), December 2019
14. [The IPCC's Climate Report on Oceans: What Seven Findings Mean for US Regulations](#), Hana Vizcarra and Laura Bloomer, October 2019

15. [What does the Business Roundtable statement mean? A lot, but also not that much.](#),

Hana Vizcarra (post discussing the Business Roundtable statement on corporate purpose), August 2019

Podcasts

1. Judge Alice Hill speaks with Hana Vizcarra about [National Security and Climate Change](#), February 2020
2. Hana Vizcarra and Samantha Ross on [Investor Assurance and Corporate Climate Disclosures](#), January 2020
3. Hana Vizcarra interviews Erik Landry about [Corporate Climate Scenarios and Strategic Resilience](#), December 2019
4. Hana Vizcarra interviews Jesse Keenan on [Climate Adaptation and Finance](#), November 2019

Appearances

1. ABA Annual Meeting, CLE Showcase: Climate Change and the Legal Profession: Beyond “Environmental Law,” July 30, 2020. Hana Vizcarra spoke on a panel with Professor Michael Gerrard of Columbia Law and former solicitor of the DOI, Hilary Tompkins of Hogan Lovells.
2. Hana Vizcarra [interviewed Ben Wilson, Chairman of Beveridge & Diamond](#), for the Women’s Council on Energy & the Environment on June 26, 2020, about environmental law practice, managing a law firm, and what it means to lead in the private sector right now.
3. Hana Vizcarra was a panelist at [Yale’s New Directions in Environmental Law 2020 conference](#) on February 8, 2020, speaking on the climate litigation panel.
4. Hana Vizcarra joined a panel at the [Virginia Environmental Law Journal’s symposium](#) on November 14, 2019, to discuss how increased concern over climate change has impacted the stakeholder/business relationship.
5. Hana Vizcarra spoke on [sustainable finance and corporate climate disclosures](#) at the [Yale Initiative on Sustainable Finance](#) symposium on November 8, 2019.

2.5 The Electricity Law Initiative

Our Electricity Law Initiative, directed by Ari Peskoe, advances clean energy deployment and informs public policy discussions with rigorous research and innovative legal arguments.

Our longstanding work to assist states in designing legally robust policies and defending those policies in court and before FERC continues to be an important asset for legislatures, attorneys general, and regulators. The Initiative also works with partner academic institutions to convene academics, regulators, advocates, and industry for discussions about legal and regulatory trends.

We look for cracks in the electricity sector's legal foundation that have been exposed by changes in the industry's structure and available technologies. We support the development of state and federal policies that reflect the industry's evolution and enable a cleaner grid.

This past year, our filings in two FERC proceedings about rules for renewable energy development reinforced filings from clean energy advocates, state utility regulators, and state attorneys general with deep legal analyses. Ari consulted with policymakers and clean energy advocates on these proceedings and on a federal court case about whether a FERC rule infringed on state authority. He has also been a vocal critic of high-profile FERC decisions that are harmful to clean energy deployment, writing an op-ed in a trade industry publication, speaking to reporters, and providing widely circulated commentary on social media.

We continue to track developments in ongoing federal court challenges to state electricity policies, including the federal government's litigation against California's cap-and-trade program and two lawsuits about state laws that block competition in transmission development. Our [Statepowerproject.org](https://statepowerproject.org) website is a comprehensive resource on preemption and dormant commerce clause challenges to state clean energy laws. In addition to summaries of more than 20 recent cases, the site includes our guidance document that distills lessons for policymakers about designing legally robust clean energy laws. We send case updates to more than 1,000 attorneys and other industry professionals, including more than 100 academics.

50+

Articles that Ari Peskoe has been quoted in since September 2019

In 2020, our Power Shift network of energy law professors and energy practitioners celebrated its five-year anniversary. We have continued to build this community of academics, advocates, and regulators, recently hosting our annual meeting in Washington, DC. Connections forged at our meetings have helped to broaden the perspective of policymakers, who are seeking innovative ideas to help them manage electric regulation in a dynamic environment. We partner with the Duke Nicholas Institute and the UNC Center for Climate, Energy, Environment, and Economics in this endeavor.

2.5.1 Summary of the Past Year

Publications

1. [Comment of the Electricity Regulation Scholars on Petition about Net Metering](#), June 2020
2. [ISO-NExit: Exploring Pathways for a Utility's Withdrawal from New England's Regional Transmission Organization](#), March 2020
3. [FERC's Clean Energy Boycott Distorts PJM Prices and Discards History](#), January 2020
4. [Comments to FERC on Proposed Revisions to Its Rules Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978 \(PURPA\) and Appendix with excerpts of legislative history](#), November 2019

Quoted in the Media & Appearances

1. In May 2020, Ari Peskoe spoke on our podcast with Leah Stokes, professor of political science at UC Santa Barbara, about her new book, "[Short Circuiting Policy](#)" on state clean energy policies.
2. In January 2020, Ari spoke with Jason Burwen on [Electricity Markets and Storage](#) on our podcast.
3. In 2020, our Power Shift network of energy law professors and energy practitioners celebrated its five-year anniversary. Our annual February workshop in Washington, DC, attracted scholars from 30 law schools, as well as state utility commissioners, congressional staffers, and a former FERC chair.
4. Over the past year, Ari Peskoe has been quoted in more than 50 articles appearing in *Politico*, *E&E News*, the *Houston Chronicle*, and an array of energy industry publications.

2.6 Visiting Professors

The EELP hosted five visiting professors this past academic year:

[Jane McAdam](#) taught a reading group in Fall 2019 – [Climate Change Displacement and the Law](#).

[Robert Anderson](#) taught [Natural Resource Law](#) in Fall 2019.

[James Saltzman](#) taught [Water Law](#) in Winter 2019.

[Katherine Meyer](#) and [Nicole Negowetti](#) taught [Animal Law & Policy](#) and at the [Animal Law & Policy Clinic](#) in both Fall and Spring 2019.

2.7 Guest Authors

EELP welcomed three guest authors this past academic year:

[Cynthia Giles](#) is a guest fellow at the Environmental & Energy Law Program and author of [Next Generation Compliance: Environmental Regulation for the Modern Era](#). Cynthia served as the Senate-confirmed assistant administrator for EPA's Office of Enforcement and Compliance Assurance for the entire Obama presidency. She has more than 30 years of service in the public, private, and non-profit sectors.

[Kevin McClean](#) retired at the end of 2017 from EPA's Office of General Counsel after serving there for more than 25 years. He is the author of [Three Years After—Where Does Implementation of the Lautenberg Act Stand?](#)

[Sharmila Murthy](#) is an associate professor at Suffolk University Law School and author of the forthcoming article, [California's Cap-and-Trade Agreement with Quebec: Surviving Constitutional Scrutiny](#).

“Working with EELP, first as a student research assistant and now as a legal fellow, has been an unmatched learning opportunity. I’m leaving EELP as a better lawyer, writer, and communicator, and with immense pride in what we do. I really believe we’re making a difference by providing the public with reliable, in-depth information about the Trump administration’s rollbacks.”

Laura Bloomer,
EELP Legal Fellow (2018-2020)

2.8 Catch Up with Professor Jody Freeman



No. 2

Second-most cited
scholar in public law
in the US

What's Jody Freeman, Archibald Cox Professor of Law, and Founder and Director of the Environmental & Energy Law Program, been up to this year?

Professor Freeman became a member of the Council on Foreign Relations in 2020 and was inducted into the American Academy of Arts & Sciences (Public Affairs and Public Policy) in 2019. She is currently working with co-editors Michael Gerrard and Michael Burger on a new edition of *Global Climate Change and US Law*, the most comprehensive treatise on the subject, which has been adopted as the principal text for climate change courses in many law schools. Professor Freeman's new article, "The Environmental Protection Agency and Climate Change," will be published in the *Duke Law and Policy Forum* this fall, and is included in the forthcoming volume *Fifty Years of Environmental Protection: Lessons from EPA's History* (2021, Rowman & Littlefield). Her casebook, *Administrative Law* (with Cass, Diver, and Beermann), is now in its 8th Edition.

In Spring 2020, Professor Freeman taught "Advanced Regulatory State," a new seminar about the novel regulatory challenges posed by fast-paced technological innovation, including data privacy, AI, the internet and democracy, autonomous vehicles, and blockchain. She is working on a new project about whether existing administrative law frameworks can adequately respond to such innovations. In March 2020, she made a Harvard University Center for the Environment video on climate policy. Professors Freeman and Lazarus offered an overview of major takeaways from the Court's last term, including significant decisions for environmental lawyers, before transitioning to discuss both upcoming term cases and continuing cases. Professor Freeman was also a guest on WHYY (PBSA and NPR affiliate), looking at the White House attempt to weaken environmental rules, how far they've gotten, and the legal challenges they're facing.

Quotes in the Media & Interviews

1. [What Amy Coney Barrett's confirmation will mean for environmental law and Joe Biden's climate plan](#), Vox, October 21, 2020 (*op-ed*)
2. [How Joe Biden Could Undo Trump's Damage to Environment](#), TIME, July 9, 2020
3. [What Biden can do if Congress balks at his green agenda](#), E&E News, May 28, 2020
4. [Short-term environment gains likely impermanent](#), Phys.org, April 23, 2020
5. [No 'silver lining' for the climate](#), Harvard Law Today, April 21, 2020
6. [This year's US elections could be a climate-policy showdown](#), Nature Magazine, March 12, 2020
7. [Trump moves to roll back landmark environmental law](#), MSNBC, January 10, 2020
8. [Power Up: California vs. Trump: Raging wildfires show the risks of Trump's climate approach](#), the Washington Post, October 30, 2019
9. [Potentially troubling times for environmental law in the Supreme Court, say HLS professors](#), Harvard Law Today, October 1, 2019
10. [Inside the Sunrise Movement: Six Weeks With the Young Activists Defining the Climate Debate](#), Vogue, September 20, 2019
11. [Trump Administration To Revoke California's Power Over Car Emissions](#), NPR Morning Edition, September 18, 2019
12. [The Auto Rule Rollback That Nobody Wants. Except Trump](#), the New York Times, September 9, 2019 (*op-ed*)
13. [Trump Administration Challenges California And Automakers On Fuel Economy](#), NPR, September 6, 2019
14. [Oil Markets Bounce On Bullish Hopes](#), oilprice.com, September 6, 2019
15. [EPA Wants to Revoke California Auto Regulation Powers](#), Bloomberg, September 5, 2019

2.9 Catch Up with Professor Richard Lazarus



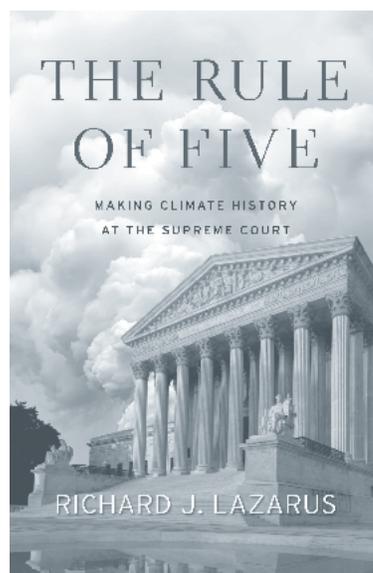
What's Richard Lazarus, Howard and Katherine Aibel Professor of Law and Co-Director of the Environmental & Energy Law Program, been up to this year?

Richard Lazarus published *The Rule of Five: Making Climate History at the Supreme Court*, which describes “the drama, strategy, cast of characters, and, above all, the lawyering, by both the litigators and the Justices, that led to the seminal Supreme Court decision in *Massachusetts v. EPA*.” Receiving rave reviews, the book led to Lazarus’ numerous book talks, both in person and on podcasts and radio interviews.

Professor Lazarus also accompanied 25 Advanced Environmental Law students to attend oral argument in the *Atlantic Coast Pipeline v. Cowpasture River Preservation* case in February. In addition to attending the argument, the students spent the hour prior with Chief Justice John Roberts, the hour after with Michael Kellogg, who argued the case for the environmental respondents, and time with Paul Clement, who argued the case for industry, and with Andrew Yang, who argued the case for the US Forest Service.

22

Book reviews & book talks on *The Rule of Five*



#1-ranked book on Amazon in books related to law and books related to the environment for several months after publication.

Buzzfeed placed the book on “The Ultimate Reading Guide to Understand the Key Issues of this Election.”

Podcasts & Radio Interviews

1. [Here and Now](#)
2. [Living on Earth](#)
3. [New Hampshire Public Radio, Outside/In](#)
4. [With Joe Goffman on CleanLaw podcast](#)
5. [With Dean UVA Law on Common Law Podcast](#)
6. [St. Louis Public Radio, Earthworms](#), July 12, 2020
7. [John Roberts Was Already Chief Justice. But Now It's His Court](#), the *New York Times*, June 30, 2020
8. [With Abortion Ruling, Roberts Reasserts His Role and Supreme Court's Independence](#), the *Washington Post*, June 29, 2020
9. [Who is Chief Justice Roberts?](#), NPR, All Things Considered, June 19, 2020
10. [Trump, Citing Pandemic, Moves to Weaken Two Key Environmental Protections](#), the *New York Times*, June 4, 2020

Journal Articles

7. [How and Why the Supreme Court made climate change history](#), *Harvard Gazette*, April 2020
8. [Making History in Environmental Law](#), *Harvard Law Today*, April 2020
17. ['Unbelievable' Timing: As Coronavirus Rages, Trump Disregards Advice to Tighten Clean Air Rules](#), the *New York Times*, April 14, 2020
18. [Harvard's Lazarus Expects More EPA Blundering on Climate Change](#), Bloomberg Environment, February 28, 2020

Quotes in the Media

9. [Latest Term Shows John Roberts in Command of Shifting Coalitions](#), the *Wall Street Journal*, July 12, 2020
10. [Chief Justice Roberts Steers Supreme Court Middle Course](#), *LA Times*, July 10, 2020
11. [Chief Justice Roberts Rebuked Trump this Term. What's He Up To?](#), NPR, July 10, 2020
12. [John Roberts Supreme Court: Surprises on Abortion, DACA](#), *USA Today*, July 10, 2020
19. [Trump's Path to Weaker Fuel Efficiency Rules May Lead to a Dead End](#), the *New York Times*, February 13, 2020
20. [Chief Justice Roberts presided impartially, yet left questions whether Trump's trial was a fair one](#), *Los Angeles Times*, February 5, 2020
21. [Senate impeachment trial is opportunity for Chief Justice Roberts to show 'nonpartisan nature' of judges](#), CBS This Morning, January 17, 2020
22. [With stakes beyond task at hand, John Roberts takes central role in Trump's impeachment trial](#), the *Washington Post*, January 16, 2020

3.0

Emmett Environmental Law & Policy Clinic Update

The Emmett Environmental Law & Policy Clinic offers students an opportunity to do real-life and real-time legal and policy work.

Our Clinic offerings include local, national, and international projects covering the spectrum of environmental and energy issues. Depending on the project, students may undertake litigation and advocacy work by drafting briefs, preparing comments and testimony, conducting research, developing strategy, and writing and reviewing proposed legislation. Students present their work to clients, stakeholders, and decision-makers, including federal, state, and local officials. Some students work off-campus with government agencies and non-profit organizations, while others work on campus on projects and case work under the supervision of Clinical Professor and Director Wendy Jacobs, Deputy Director Shaun Goho, and Senior Clinical Instructor Aladdine Joroff.

During the past year, the Clinic both defended longstanding federal environmental laws and developed innovative approaches to addressing climate change. With a particular focus on preserving the role of science and highlighting the voices of scientists, doctors, and public health experts in federal environmental decision making, we filed numerous comment letters and amicus briefs on behalf of experts in legal efforts to push back against the Trump administration's efforts to roll back environmental protections and undermine the role of experts. The Clinic also continued our groundbreaking work educating citizen scientists of their rights, expanding and updating the website we created for citizen scientists, and routinely answering legal and policy questions submitted by citizen scientists through the Citizen Science Association.

15

Amicus briefs filed & comment letters sent since April 2019

3.1 Emmett Environmental Law & Policy Clinic Staff



Wendy Jacobs

Director



Shaun A. Goho

**Deputy Director & Senior
Staff Attorney**



Aladdine Joroff

**Senior Staff
Attorney**



Leah Cohen

Fellow



Tommy Landers

**Clinical
Fellow**



Jacqueline Calahong

**Staff
Assistant**

To round out our portfolio, the Clinic worked with municipalities and regional partnerships across the US to develop model ordinances, litigation strategies, and policy analyses for climate change mitigation and adaptation.

3.2 Citizen Science

The Clinic has, over several semesters, developed a comprehensive manual to guide and empower citizen scientists in all 50 states to collect information about the environmental condition of their communities, to use that information effectively, to avoid legal pitfalls set up in several states to deter citizen science, to prepare their communities for disasters, and to litigate citizen suits. The Citizen Science Manual is now a free online resource available at:

citizenscienceguide.com.

1. In Spring 2019, Clinic students and staff presented the manual at two national conferences: the Citizen Science Association Conference in Raleigh, North Carolina, and the National Environmental Justice Conference and Training Program in Washington, DC. Clinic students and staff also supplemented the manual with chapters on [community readiness for chemical release emergencies](#) (such as from extreme storms) and [strategies for grappling with obstacles to the use of citizen-gathered data in litigation](#).
2. In the summer of 2019, Professor Jacobs taught a hands-on course on Citizen Science at the Universidad Politécnica de Madrid with a specific focus on the health impacts of air pollution in Madrid. Students in the course collected air samples, analyzed the samples in the lab, developed recommendations for improving local air quality, and presented their findings to city officials, members of local activist organizations, and university faculty.

The Clinic is also working with the Citizen Science Association (CSA) to continue to help educate and facilitate the work of citizen scientists. To that end, Deputy Director Shaun Goho was a founding co-chair of the CSA's Law and Policy Working Group. The working group has created a [tool through which the citizen scientist](#)

[community can submit questions about relevant laws and policies raised by citizen science projects](#). The Clinic has volunteered to make our students available to answer such questions. Mr. Goho has been training and supervising Clinic students to answer the questions submitted by citizen scientists. In addition to being posted on the Citizen Science Association website, the Clinic's answers are [available on our Citizen Science Manual website](#).

3.3 Supporting Innovative Municipal, Regional, and State Climate Change Initiatives

The Clinic supports municipalities, regional organizations, and states in developing cutting-edge approaches to advancing climate change mitigation and adaptation goals. Examples of projects from this year include:



3.3.1 Green Buildings

Writing a model ordinance for reducing greenhouse gas emissions from the building sector, accompanied by a public white paper that analyzes the authority of towns and cities in Massachusetts to mandate “net zero” building measures, and presents ideas for tax-based incentive programs. Also working one-on-one with communities to analyze and develop legislative options to address greenhouse gas emissions from the building sector.



3.3.2 Natural Gas Bans

Commenting on the first municipal bylaw in Massachusetts to limit the use of natural gas in new and modified buildings, focusing on consistency with the Commonwealth's Building Code and public utility laws.



3.3.3 Zoning & Fossil Fuel Infrastructure

Utilizing zoning to regulate industrial activities that contribute to climate change while protecting and improving the health and resilience of environmental justice communities.



3.3.4 Inland Flooding

Developing strategies to promote regional resilience to extreme flooding events in the Midwest as a result of large snowmelts, significantly higher than average precipitation, and long periods without interruption in rainfall.



3.3.5 District Energy

Developing regulatory and policy strategies to advance the development of district energy for heating and cooling buildings in Massachusetts, with particular emphasis on district energy systems powered by ground-source heat pumps. On behalf of the state, the Clinic analyzed several major legal and policy questions related to district energy systems, such as the legal implications of a variety of ownership structures for these systems; the types of district energy systems in place in the US; the regulatory requirements and approval processes that would apply to these systems; and available state and federal incentives for financing and promoting ground-source heat pumps in Massachusetts.

3.4 Climate Solutions Living Lab

The Climate Solutions Living Lab, developed and taught by Emmett Clinical Professor of Environmental Law and Clinic Director Wendy Jacobs, is an innovative course in which advanced students from graduate schools across Harvard University (law, business, engineering, design, public health, public policy, and education) collaboratively design projects to reduce greenhouse gas emissions. Each project must achieve quantifiable greenhouse gas emissions reductions, quantifiable public health and other social benefits (e.g., improved water and air quality, training, jobs), and be scalable, replicable, fundable, permissible, and otherwise feasible to implement. Given that the academic semester is only 12 weeks, a number of Lab projects are taken up by the Clinic for further analysis and refinement before being distributed to entities interested in implementing the projects.

50

States included in a survey of laws relevant to the activities of citizen scientists

3.4.1 Student Projects

During Spring 2020, students in the Climate Solutions Living Lab developed the following projects:

- [Cover Crop Credit Partnerships Guide](#) – A model cover crop partnership program to plug gaps in federal funding and enable farmers to reduce nitrous oxide and carbon dioxide emissions, improve soil health and water quality, and generate greenhouse gas emission reduction offsets.
- [Changing the Game: A Playbook for Reducing Greenhouse Gas Emissions at University Athletic Departments](#) – A manual for university athletic departments to reduce their own unique greenhouse gas emissions. While many athletic departments already engage in sustainability efforts, the Lab’s manual identifies measures to enable athletic departments to achieve deeper emissions reductions, offset emissions from travel, and tap into new funding sources to pay for these efforts.
- [Options for Replacing Halocarbon Refrigerants to Reduce Damaging Climate Impacts](#) – A manual for institutions such as universities, businesses, and state and local governments to take action individually and through coalitions to reduce the use of halocarbon emissions, one of the most potent greenhouse gases.
- Harvard Catalytic Climate Initiative – An innovative, university-based investment initiative to fund and catalyze pilot and demonstration projects that are currently unable to access funding, but that show promise for reducing greenhouse gas emissions and providing co-benefits.

4

Number of Climate Solutions Living Lab projects developed in Spring 2020

3.4.2 Appearances

The Climate Solutions Living Lab was featured in:

- [The National Academies of Sciences, Engineering and Medicine's Spring 2019 Newsletter](#)
- The Environmental Law Institute's January/February 2020 edition of the *Environmental Forum*, [Testimony – Breaking Through](#)
- *The Mid-West Farm Report*, [Harvard Law Students Visit Wisconsin Dairy Farm](#) February 2020, focusing on the student Lab team working on a pilot program to assist farmers in reducing nitrous oxide and carbon dioxide emissions using cover crops
- *MIT Science Policy Review* on August 20, 2020, [Institutions and governments can slow climate change by regulating and reducing halocarbon refrigerant use](#), highlighting the Lab's research on reducing the climate impact of refrigerants and other HFCs

Professor Jacobs serves as a faculty liaison to the new Climate Leaders Program, a multidisciplinary student group that grew out of the Climate Solutions Living Lab. She also leads tutorials for graduate students across Harvard University about how to comment effectively on regulations proposed by federal and state agencies and how to submit requests for public records under federal and state laws.

3.5 Amicus Briefs & Comment Letters

The Clinic regularly files amicus briefs and submits comment letters on Trump administration environmental rollbacks on behalf of scientists, economists, former federal agency officials, and nongovernmental organizations.

1. **[United States Fish and Wildlife Service, et al. v. Sierra Club, Inc.](#) (U.S. No. 19-547; filed August 3, 2020):** The Clinic’s brief, filed on behalf of former federal agency officials, urges the US Supreme Court to affirm a 9th Circuit decision in a case involving the application of the Freedom of Information Act to Biological Opinions prepared under Section 7 of the Endangered Species Act. The Clinic argues that the disclosure of draft Biological Opinions would not harm the interests protected by the deliberative process privilege and is important for ensuring transparent and accountable decision-making under the ESA.
2. **[American Lung Association v. EPA](#) (D.C. Cir. No. 19-1140; filed April 23, 2020):** The Clinic’s brief, filed on behalf of expert scientists and economists, argues that the Affordable Clean Energy Rule promulgated by the Trump administration to replace the Obama administration’s Clean Power Plan is inconsistent with the Trump EPA’s fact-finding about the hazards of climate change, particularly given the risks of exceeding climate “tipping points” and the key role that power sector emissions reductions must play in decarbonizing the entire economy.
3. **[Kelsey Cascadia Rose Juliana v. United States of America](#) (9th Cir. en banc, No. 18-36082; filed March 12, 2020):** The Clinic’s brief on behalf of medical experts explains that the generation of children and youth represented by the plaintiffs (the “Juliana Generation”) in this landmark climate case against the federal government is already experiencing climate-related adverse health effects and that these effects will worsen over their lifetimes.
4. **[League of United Latin American Citizens v. Andrew Wheeler](#) (9th Cir., No. 19-71979 & No. 19-71982 Consolidated; filed December 13, 2019):** The Clinic’s brief on behalf of scientists and health experts explains that a significant body of research has demonstrated that children are vulnerable to long-lasting neurological harm from exposure to the pesticide chlorpyrifos during pregnancy and that EPA cannot reasonably cite scientific uncertainty as a basis for failing to take action to ban its agricultural use.
5. **[County of Maui v. Hawai’i Wildlife Fund, et al.](#) (U.S. 18-260; filed July 19, 2019):** The Clinic’s brief on behalf of several former senior officials at EPA urged the US Supreme Court to affirm the lower court’s decision holding the County of Maui liable under the Clean Water Act for point source discharges conveyed to navigable water through groundwater because it was consistent with decades-long NPDES permitting practices and reversing that decision would lead to inconsistencies in legal protections for surface waters.

6. EPA Advisory Committee Directive (Summer/Fall 2019): The Clinic filed briefs in three cases challenging former EPA Administrator Scott Pruitt’s directive to exclude scientists who hold EPA research grants from serving on EPA’s scientific advisory committees, arguing that these scientists have highly relevant scientific expertise to offer, and barring them from the advisory committees would impair EPA’s ability to base its decisions on the “best available science.” The three cases are:

- [Union of Concerned Scientists v. U.S. Environmental Protection Agency \(1st Cir. No. 19-1383 filed July 25, 2019\)](#)
- [Physicians for Social Responsibility v. Andrew Wheeler \(D.C. Cir. No. 19-5104 filed August 22, 2019\)](#)
- [Natural Resources Defense Council v. U.S. Environmental Protection Agency \(S.D.N.Y. No. 1:19-cv-05174-DLC filed October 16, 2019\)](#)

Comment Letters

1. EPA’s Rule on Cost-benefit Analysis for Clean Air Act Rulemakings (August 3, 2020): The Clinic submitted comments on behalf of Chesapeake Bay Foundation and National Parks Conservation Association on EPA Proposed Rule “Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process.” The comments urge EPA to withdraw the Proposed Rule in light of its lack of authority to promulgate the Rule under Section 301 of the

Clean Air Act, and provide examples of how the Proposed Rule would undermine environmental protections and the existing regulatory programs that are essential to public health, protection of ecosystems and wildlife, and local economies, and would push additional compliance obligations onto states and private parties.

2. EPA’s Review of National Ambient Air Quality Standards for Particulate Matter (June 26, 2020): The Clinic submitted comments on behalf of researchers at the Harvard T.H. Chan School of Public Health and Boston University School of Public Health on EPA’s proposal to leave in place the current NAAQS for particulate matter. The proposal disregards substantial evidence that fine particulate matter causes serious, adverse health effects at levels below the current NAAQS. The comments emphasized the irony that even as EPA rushes through an erroneous decision resulting from a flawed process in the midst of the COVID-19 pandemic, evidence is emerging that fine particulate matter pollution may be exacerbating the effects of that pandemic.

3. National Environmental Policy Act (NEPA) Rule (March 10, 2020): On behalf of itself and a number of other environmental law clinics, the Clinic’s comments request that the Council on Environmental Quality (CEQ) withdraw its proposed update to the NEPA Regulations because it unlawfully narrows the scope of environmental review, public participation, and judicial review, is inconsistent with decades of precedent and practice, and is beyond the scope of CEQ’s authority under NEPA.

- 4. Municipal Bylaw Limiting the Use of Natural Gas in New and Modified Buildings (February 27, 2020):** The Clinic submitted comments on the first municipal bylaw in Massachusetts to limit the use of natural gas in new and modified buildings. Writing on behalf of Mothers Out Front Massachusetts, the Clinic explained that Brookline’s “Prohibition on New Fossil Fuel Infrastructure in Major Construction” reflects a traditional exercise of municipal authority that is not preempted.
- 5. Lead and Copper Rule (February 11, 2020):** Together with the Environmental Defense Fund (EDF) and Dr. Karen Baehler of American University, the Clinic submitted comments objecting to the adverse health equity, environmental justice, and civil rights impacts of EPA’s proposed revisions to its Lead and Copper Rule.
- 6. EPA Science Advisory Board (SAB) Review of EPA Rulemakings (January 10, 2020):** The Clinic submitted comments to SAB on its draft reports on EPA proposals regarding mercury emissions from coal-fired power plants and the scope of waters protected under the Clean Water Act. The Clinic’s comments commended SAB for pointing out scientific problems with both proposals but also indicated areas where SAB’s critiques are incomplete.
- 7. Written Statement to SAB on the Transparency Rule (August 20, 2019):** On behalf of 32 medical and public health experts, scientists, researchers, and clinicians, the Clinic’s statement urges SAB to conduct a full review of EPA’s proposal “Strengthening Transparency in Regulatory Science,” and to push back against EPA’s exclusion of important public health data when setting regulatory standards. The rule would undermine EPA’s decision-making.
- 8. IRIS Assessment Plan for Methylmercury (May 6, 2019):** On behalf of a group of leading scientists, the Clinic submitted comments on EPA’s proposed Integrated Risk Information System (IRIS) Assessment Plan for methylmercury, a highly toxic and bioaccumulative contaminant. The comment letter urges EPA to acknowledge the imprecisions in exposure measurements and to account for such biomarker imprecisions in the reassessment; to account for genetic differences in susceptibility to methylmercury toxicity; and to include cardiovascular impacts in the IRIS assessment.
- 9. Mercury Standards for Coal-fired Power Plants (April 17, 2019):** On behalf of scientists with expertise in the atmospheric transport, ecosystem fate and effects, bioaccumulation, human exposures, and health outcomes associated with environmental mercury contamination, the Clinic submitted comments opposing EPA’s proposal to overturn the finding underlying its regulation of mercury and other toxic air pollutant emissions from coal-fired power plants. The comments explain that the proposal is based on an old and incomplete analysis that underestimated the benefits of regulating power plant mercury emissions and overestimated the compliance costs.



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Environmental law clinics that requested the CEQ withdraw its proposed update to NEPA regulations

3.6 White Papers

1. In August 2020, the Clinic released a new guide, [Legal Issues in Dam Removal: A Guide for Massachusetts Dam Owners](#), which provides information on some common legal issues and questions for dam owners in Massachusetts and their attorneys, such as the liability risk a dam owner faces for harms caused by dam failure, and whether a dam owner has a legal responsibility to mitigate harms to existing uses of the river that would be affected by the dam removal.
2. In May 2020, the Clinic publicly released a guidance paper with a model green building ordinance, [Strategies for Massachusetts Municipalities to Implement Net Zero Building Mandates](#), which examines legal complexities that Massachusetts towns and cities must navigate when mandating reductions of greenhouse gas emissions from the building sector. The paper evaluates a range of municipal options, concludes that several are viable with existing authority, and then provides an annotated model ordinance for approach.
3. The Clinic, in partnership with the Environmental Defense Fund, released a paper in April 2019, [Rates Could Fund Lead Pipe Replacement in Critical States](#), which demonstrates the authority of water utilities in 13 key states to use ratepayer funds to pay for full lead service lines (LSL) replacement. LSL—the pipes that connect the water main under a street to the plumbing in a building—are the largest source of lead in drinking water. There is broad consensus that all LSL will need to be replaced, but it is expensive and a major challenge is how to pay for these replacements. One logical approach is for water utilities to use rates paid by customers. We reviewed the laws of 13 states, which collectively have an estimated 4.2 million LSL, more than two thirds of the nation’s total. Our analysis concluded that there are no explicit legal barriers to using ratepayer funds for LSL replacement in these states.

3.7 Presentations & Publications

1. [A Lesson from COVID-19: Re-Envisioning Public Private Partnerships](#), Zofnass Program for Sustainable Infrastructure, Aladdine Joroff, August 2020
2. [Weathering the Storm: Extreme Weather & Climate Change](#), Environmental Law Institute, Aladdine Joroff, June 2020
3. [Climate Change: Update on Mitigation and Adaptation](#), MCL 21st Annual Environmental, Land Use & Energy Law Conference, Aladdine Joroff, January 2020
4. [Health, Law & Climate Justice for Youth](#), Harvard School of Public Health, Aladdine Joroff, October 2019
5. Representing Multijurisdictional Climate Change Adaptation Initiatives – A Wicked Problem!, Environmental Law Network, Aladdine Joroff, September 2019
6. [Introducing the CSA Law and Policy Working Group and its new Legal Question Submission Tool](#), Citizen Science Association Law & Policy Working Group Webinar, Shaun Goho, September 2019
7. [Population Allocation at the Housing Unit Level: Estimates around Underground Natural Gas Storage Wells in PA, OH, NY, WV, MI, and CA](#), *Environmental Health*, co-author Shaun Goho, July 2019
8. [Collecting and Reporting Evidence of Environmental Law Violations: Tools that Work for Citizens](#), International Network for Environmental Compliance and Enforcement Webinar, Shaun Goho, June 2019
9. [Electric Vehicles Could Help the Climate, but Deploying them Needs Careful Planning](#), Yale Climate Connections, Aladdine Joroff, June 2019
10. [The Case of Juliana v. U.S. – Children and the Health Burdens of Climate Change](#), the *New England Journal of Medicine*, co-author Wendy Jacobs, May 2019
11. [Carbon Capture and Sequestration chapter in the book *Legal Pathways to Deep Decarbonization in the United States*](#), Environmental Law Institute, co-author Wendy Jacobs, March 2019
12. Methods for Identifying Sectoral and Cross-Cutting Opportunities for a Private Sector Wedge at BW+10: The Tenth Anniversary of the Behavioral Wedge at Vanderbilt Law School, Wendy Jacobs, March 2019
13. [The U.S. Environmental Protection Agency's Proposed Transparency Rule Threatens Health](#), *Annals of Internal Medicine*, co-author Wendy Jacobs, February 2019
14. Environmental Law Clinics: The Secret Weapon to Saving Our Environment, Turner Environmental Law Clinic 20th Anniversary Conference at Emory Law School, Wendy Jacobs, January 2019

4.0

Harvard Environmental Law Review Update

45

Number of volumes
of HELR

The Harvard Environmental Law Review (HELRL) is currently in the final stages of publishing its second issue of volume forty-five, which contains exciting new scholarship on scientific risk assessment, the Endangered Species Act and Clean Water Act, and the intersection of climate change and national security, as well as multiple great pieces of student work.

With Harvard Law School's shift to online instruction this fall semester, the journal has modified its normal editing process to function completely remotely. Much like with HLS classes, the abrupt transition to remote work this past March forced the journal to begin working in a way it never had before. Now, thanks to advance notice of the remote semester, we are using the opportunity to experiment with our editing process and hope to leave the journal even stronger than before.

In addition to the transition to remote work, we are excited to announce that the journal's upcoming Spring issue will be devoted to a symposium on environmental justice. The ongoing national protests over police brutality have ignited the public consciousness over the racial disparities that pervade our society. Environmental and conservation movements in the US are not free of this discrimination, as they have been and continue to be overwhelmingly led by white people, often at the expense of BIPOC voices and interests.

HELRL has previously published a number of articles engaging in questions of environmental justice, and we have two such articles in our forthcoming issue: on the legal effects of climate change on migration, and about water quality in Indian country. While we are proud to highlight environmental justice issues in our journal on a routine basis, this moment calls for bolder action and more sustainable change, and for those in positions of influence to use their power to elevate the voices from and needs of marginalized communities. Environmental justice should not be a subfield of environmental work, but rather a central concept in all we do. We are excited to use the platform and privilege we have to highlight work at the nexus of the environment and racial justice.

Updates on our work, including our upcoming symposium, as well as all of our previously published articles, can be found at harvardelr.com.

Rachel Westrate & Cole Jermyn / Editors-in-Chief / Harvard Environmental Law Review

5.0

Harvard Environmental Law Society Update

The Harvard Environmental Law Society (HELRL) is working hard to pursue its mission while adapting to a virtual semester.

This fall, among other things, [HELRL](#) is hosting an online speaker series focused on the topic of environmental justice. It hopes to elevate the voices of environmental attorneys, academics, and organizers who have previously been excluded from the mainstream environmental narrative. This series will expose students to environmental careers that they might not have otherwise considered, and it will bring some much-needed intersectionality to the environmental law discourse at HLS. HELRL will be co-hosting certain speakers with other student groups that do justice work; such connections are important in building a comprehensive environmental movement.

“Of the many opportunities afforded to me as a student at Harvard Law School, the one that was undeniably the most rewarding and impactful to my understanding of how to practice law was participating in the Emmett Environmental Law and Policy Clinic.”

Heather Romero, J.D. '19, From Student to Lawyer: My Time in the Environmental Law & Policy Clinic, HLS Clinical and Pro Bono Programs Blog, June 13, 2019



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Advanced Environmental Law students accompanied Professor Richard Lazarus to the Supreme Court to hear oral argument in February 2020.



ENVIRONMENTAL &
ENERGY LAW PROGRAM

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