

## **Environmental Law and Policy 1, 11:374:460, Fall 2020 (3 credits)**

M, W, 2:15-3:35 – Canvas and Zoom

To get started with this class, go to [Canvas](#), log in with your NetID and password, choose this class, and you should be on the home page.

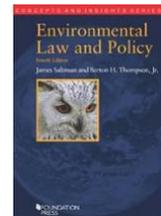
### **Professor Cymie Payne**

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Office hours: To discuss what we are studying or anything else, please email me: [cymie.payne@rutgers.edu](mailto:cymie.payne@rutgers.edu)

### **Course Book and Technology:**

James Salzman, Barton Thompson, Environmental Law and Policy (fifth edition, Foundation Press) ISBN: 978-1-68328-790-2 (be sure to get the correct edition: it has a snowy owl on the cover). It lists for on the [publisher's website](#) or the [campus bookstore](#) for \$49.00, e-book for \$36.75. Some Amazon sellers mark it up twice that, so be careful! Also, this is a new book for this course; you will not be able to use a book from a previous semester.



Other readings will be identified on the syllabus. These will be available on the web or University Library e-reserves.

You will need to have access to a computer with an internet connection, a supported browser, microphone, and camera that are adequate to participate in the Zoom class meetings.

### **Course Description:**

This course is intended to prepare students entering environmental science, policy and law professions to understand the laws, regulations, and court decisions you will encounter; and to introduce you to related history and regulatory theory so that you can identify, apply and begin to design governance tools to achieve sustainability goals.

This upper level course covers US law and policy governing air, water and other natural resources, biodiversity and public health. We consider environmental law and policy at local, state, regional, national and transnational scales, with a primary focus on common law and US federal statutes: the Clean Air Act, Clean Water Act, National Environmental Policy Act, CERCLA (Superfund) and the Endangered Species Act. These statutes are representative of varied approaches to regulation and students who pursue a range of environmental and policy careers will most likely be working with them—many environmental professions exist because of these laws. Given the importance of the climate crisis, we will give special attention to greenhouse gas pollution.

The class will examine sources of law, including the US Constitution, the common law, legislation, administrative rulemaking, formal and informal law and evolving negotiated and market-based approaches to regulation. You will develop basic skills in legal research, case analysis, statutory interpretation and regulatory design.

### **Learning objectives** You will:

- Identify appropriate governance tools to manage human-environment impacts and be capable of engaging with regulatory, legislative and other democratic processes.
- Identify different approaches to the governance and management of human activities that affect the environment in the US, including institutions, property relations, management regimes, politics, and policies
- Develop a basic knowledge of key federal environmental laws and familiarity with state and local measures
- Know how law is made and enforced by legislatures, administrative agencies, courts and civil society
- Apply this knowledge to determine what the governing law is in an area where the law is actively changing
- Find court decisions in free internet databases; learn to comment on federal rulemaking
- Analyze a judgment and report on the facts, the law applied by the court, and the judge's ruling (i.e., brief cases)
- Develop a basic understanding of regulatory design
- Analyze and interpret evidence.
- Improve writing, speaking and listening skills

You will meet the outcomes by participating actively in class discussions and activities and completing several practical applications of knowledge and skills to real-world problems.

## Basis for Evaluation

**10% Class participation:** Be prepared by reading the assignments and take the opportunity to make thoughtful contributions to class discussion. This part of your grade reflects your interest in learning, your willingness to contribute your own ideas to the group learning process, at the same time that it provides an incentive for you to be present and acquire information and skills. See Canvas Syllabus, Announcements, and Modules for directions about preparations for class and class activities. I am happy to provide individual feedback on your assignment if you send me an email to ask that we talk about it or for me to give you written comments.

**15% quizzes, discussions and other activities associated with individual classes.**

**15% 3 short written assignments** which allow you to learn and practice skills (weighted differently): Finding the Law; Comment Letter; and Regulatory Review. See syllabus for the dates when assignments will be explained and when they are due; see Canvas Assignments for directions and to submit.

**60% 2 exams of equal weight.**

Note: Exam, paper and course grades are based on individual performance; I do not curve grades in this class.

### Prerequisite:

There is no prerequisite course. However, you will need to know, before the course starts, the basics of how the government of the United States works. This is essential knowledge for you to make sense of the law and policy that we will be studying. The material that you are expected to know can easily be reviewed (or learned) by spending thirty minutes with the 2019 (2020 isn't out yet!) New Jersey Citizen's Guide to Government by the League of Women Voters ([here](#) or in Canvas Module: Class 1). Basic explanations of the function of the three branches of government, and local, state and federal government are given, along with the name and address of all elected NJ officials (you don't need to know who all the NJ officials are, but you should know who the governor and your state and federal representatives are).

## Overview of Online Course Activities

We will be using Canvas and Zoom.

Class meetings will generally be synchronous, that is, we will all meet via Zoom at the scheduled class time. Class time will be used for lectures by me or a guest; discussion with the entire class during which I may call on some students to discuss a particular point or to present some of the information in the reading to launch a discussion; and break-out sessions in smaller groups for a variety of activities to deepen your understanding or to apply your new knowledge to factual scenarios.

Live ("synchronous") classes will be recorded. The recordings are posted on the Canvase site. Note that the breakout rooms are not recorded. If you will be taking this class in a different time zone from where Rutgers is located (Eastern Standard Time/Eastern Daylight Time), please let me know so that I can make appropriate adaptations to allow for your full participation.

The course Canvas site will be the location you should check regularly for updates to the syllabus, announcements (which include information about meeting times, assignments, tips and answers to student questions, and postings of internships, events of interest, and hot news relevant to the class), written Assignments, reading assignments (in Modules), and other information.

→ This syllabus, along with course assignments and due dates, are subject to change. It is your responsibility to check Canvas for corrections or updates to the syllabus. Any changes will be clearly noted in a course announcement or through email ←

<b>Part I – United States and New Jersey Government</b>		
<p><i>We begin with the basic structure of the United States government and New Jersey state government. Those who preceded us decided that these were the best institutions they could design to ensure we would be free to live in dignity and to pursue happiness in our own way. For better or worse, they held private property – money, land, stuff – in high esteem and emphasized property rights in the U.S. Constitution. They also recognized that, like it or not, humans live in communities and that to maintain the benefits that federal and state governments were designed to provide, every citizen would have to take responsibility for voting, serving as representatives, reporting, informing themselves, and more. This would be the only way to balance public, collective interests with private interests.</i></p>		
1	9/2 Wed	<p><b>Class introduction – Chapter 1, An Introduction to Environmental Law and Policy, pp 3-16</b> Prepare to discuss the questions on pp. 15-16.</p> <p><b>Lectures:</b></p> <ul style="list-style-type: none"> <li>– <b>Introduction to the Law: Kinds and Sources of Law</b></li> <li>– <b>Introduction to the Federal and State Court Systems</b></li> </ul> <p><b>Quiz</b></p> <p>League of Women Voters of New Jersey, 2019 New Jersey Citizen’s Guide to Government</p>
<p>If you are a US citizen and eligible to vote you can register to vote, request a mail-in ballot, and vote in the November election. If you aren’t a NJ resident, you will need to register in your state and request a mail-in ballot. New Jersey does <u>not</u> offer the opportunity to register to vote on Election Day. Most states require mail-in registration be received by 30 days before the election. New Hampshire town and city clerks will accept the national application only as a request for their own absentee voter mail-in registration form. North Dakota does not have voter registration. Wyoming law does not permit mail registration. For information about all this: RU VOTING: <a href="http://cypp.rutgers.edu/ru-voting/">http://cypp.rutgers.edu/ru-voting/</a> and NJ Dept. of State <a href="http://www.njelections.org/">http://www.njelections.org/</a> and <a href="https://www.rockthevote.org/voting-information/new-jersey/">https://www.rockthevote.org/voting-information/new-jersey/</a></p>		
	9/7 Mon	<b>LABOR DAY – NO CLASS</b>
2	9/8 Tues	<p><b>Perspectives on Environmental Law and Policy – chapter 2, Part I-Basic Themes, pp 17-30</b> SCIENTIFIC UNCERTAINTY: NYT ARTICLE ON Carl Zimmer, How You Should Read Coronavirus Studies, or Any Science Paper, NYT (1 June 2020) <a href="https://www.nytimes.com/article/how-to-read-a-science-study-coronavirus.html?algo=identity&amp;fallback=false&amp;imp_id=691067641&amp;action=click&amp;module=Smarter%20Living&amp;pgtype=Homepage">https://www.nytimes.com/article/how-to-read-a-science-study-coronavirus.html?algo=identity&amp;fallback=false&amp;imp_id=691067641&amp;action=click&amp;module=Smarter%20Living&amp;pgtype=Homepage</a></p>
3	9/9 Wed	<p><b>Perspectives on Environmental Law and Policy – chapter 2, Part II-Four Analytical Frameworks, pp 31-50</b></p> <p>Finding the law assignment explained</p>

**Part II - Environmental Law made by Congress and the Judiciary**

*In the United States, legal rules allocating responsibility and obligations to provide a remedy for an injury can be created by judges, based on the judge's interpretation of the U.S. or state constitutions and previous court decisions. This system is called "common law". When industrialization began to impinge on communities, people turned to the state and federal courts for help. Common law still exists in parallel with the other sources of environmental law, which are the U.S. Constitution (and state constitutions), and legislation: laws that are passed by the U.S. Congress or state legislatures.*

*Administrative law is the main source of environmental law today. The environmental laws that we have are the reason our air and water is better today in many places than it was in the 1970s. Unfortunately, the financial costs of regulation are more evident than the health and environmental benefits, so there is usually vigorous lobbying and litigation by business interests and property owners in opposition to restrictions on their activities.*

*The current president, representing those interests, vowed to dismantle environmental regulation. The extreme measures that his administration has attempted has created an unprecedented situation. Some of the laws that have been targeted are central to our study. We will discuss the tools the executive branch has used, how public interest non-profit organizations have responded, and what the courts have done so far.*

4	9/14 Mon	<p><b>The Practice of Environmental Protection, Chapter 3, Parts I-Instrument Choice and II-The Administration of Environmental Protection, pp 51-74</b></p> <p><b>The two Lectures that were to have been pre-recorded will be given in class time instead:</b></p> <ul style="list-style-type: none"> <li>- <b>Administrative Law</b></li> <li>- <b>Regulatory Theory</b></li> </ul> <p>Finding the law assignment due</p>
5	9/16 Wed	<p><b>The Practice of Environmental Protection, Administrative Law and Regulatory Theory (continued from Monday)</b></p>
6	9/21 Mon	<p><b>Chapter 3, Parts III-Constitutional Issues and IV-How Citizen Groups Shape Environmental Law, pp 75-90</b></p> <p><b>Enforcement, Chapter 4, pp 91-114</b></p> <p><b>Quiz on chapter 3 (due 9/22 midnight)</b></p>
7	9/23 Wed	<p><b>The Clean Air Act: Introduction, NAAQS, SIPs</b></p> <p><b>S&amp;T Chapter 5, pp 115-124 (10 pp)</b></p> <p><b>Morgan Conley, 3rd Circ. Orders EPA To Fix 'Gaping Loophole' In Ozone Limits, Law360 (August 27, 2020) (1 p)</b></p> <p>Find and read: <i>Sierra Club v. EPA, No. 19-2562 (3d Cir. 2020)</i> (30 pp)</p>
8	9/28 Mon	<p><b>The Clean Air Act: NSPS, Trading, Interstate Pollution, PSD</b></p> <p><b>S&amp;T Chapter 5, pp 125-137 (13 pp)</b></p> <p>Do <b>The Regulators</b> assignment in the module for class 8, which entails finding a statute in the on-line government service, reading it (it's about 2 pp) and watching a video documentary (2h 23m). <b>2:15-2:45 GUEST SPEAKER: CHARLES MCPHEDRAN, STAFF ATTORNEY, EARTHJUSTICE, and attorney for the <i>Sierra Club v. EPA</i> case discussed in class 7. Bring your questions!</b></p>
9	9/30 Wed	<p><b>Clean Air Act: Hazardous Air Pollutants, Mobile Sources, Tech-Forcing, CAA of Tomorrow</b></p> <p><b>S&amp;T Chapter 5, pp 138-142 (5 pp)</b></p> <p><b>Review chapter 5 and prepare two positions for Problem Exercise: Rule 1610 on p. 135, one representing Communities for a Better Environment, and one representing CARB, which we will debate in class.</b></p>

10	10/5 Mon	<b>Global Air Pollution</b> <b>S&amp;T Chapter 6, Ozone Depletion and Climate Change, pp 143-165 (23 pp)</b>
11	10/7 Wed	<b>Global Air Pollution</b> <b>Ch 6, Ozone Depletion and Climate Change, pp 165-174 (10 pp)</b> <i>Juliana, et al. v. United States of America, et al., First Amended Complaint (10 Sept 2017)</i> (30 pp)
12	10/12 Mon	<b>Unraveling Environmental Law and the Principle of Non-Regression</b>
Oct 13 – last day to <u>register</u> to vote in NJ		
13	10/14 Wed	<b>Water Pollution, Chapter 7, pp 175-206</b>
14	10/19 Mon	<b>Water Pollution, cont.</b>
15	10/21 Wed	<b>Midterm – in class</b>
16	10/26 Mon	<b>Regulating Toxic Substances, Chapter 8, pp 207-234</b>
17	10/28 Wed	<b>What is a life worth?</b>
18	11/2 Mon	<b>Cost Benefit Analysis in Agency Rulemaking and Review of Regulations</b>
November 3 - ELECTION DAY 6am-8pm		
19	11/4 Wed	<b>Waste Management, Chapter 9, Part I-RCRA, pp 235-251</b>
20	11/9	<b>Waste Management, Chapter 9, Part II-CERCLA, pp 252-274</b>
21	11/11	<b>Waste Management, CERCLA</b>
22	11/16 Mon	<b>Environmental Justice</b>
23	11/18 Wed	<b>The Public Trust Doctrine, Chapter 10, pp 275-280 and other readings</b>
24	11/23 Mon	<b>Protecting Wetlands, Chapter 10, pp 281-293 and other readings</b> <b>WOTUS, wetlands delineation</b>
	Nov 25 Wed	NO CLASS: THIS DAY IS TREATED AS A FRIDAY
	Nov 26-29	THANKSGIVING BREAK
25	11/30 Mon	<b>The Endangered Species Act, Chapter 10, pp 293-314</b>
26	12/2 Wed	<b>Environmental Impact Assessment - National Environmental Policy Act, Chapter 12, pp 339-355</b>
27	12/7 Mon	<b>Energy, Chapter 11, pp 315-338</b>  <b>Regulatory Review Assignment due</b>

28	12/9 Wed	<b>Review</b>
	12/11-14	READING DAYS
	TBD	<b>FINAL EXAM</b> this exam will be cumulative, emphasizing material covered in the second half of the semester

**Disability Services Statement:**

If you have a disability and require instructional and/or examination accommodation, please inform me early in the semester of accommodations you need. If you have not already done so, register with the Office of Disability Services, the designated office on campus to provide services and administer exams with accommodations for students with disabilities. The Office of Disability Services is located in the Kreeger Learning Center, 151 College Ave, Suite 123, New Brunswick phone number 732-932-2848.

**Academic Integrity:**

In my experience, the norm is for students in my classes to behave with deep respect for their own honor and integrity and for each other. The rare exceptions violate the mutual trust between students, and between students and faculty, and will not be tolerated. You can find a description of Rutgers academic integrity policy here: <http://academicintegrity.rutgers.edu/>. Please read it carefully so that you do not inadvertently engage in behavior that is a violation of the policy.

**Studying Together:**

Studying together is particularly helpful in this class. You will learn more by getting together with others to work through questions posed in the assigned reading and to create hypotheticals testing your understanding and applying the class material to environmental pollution, environmental justice and resource use issues that you encounter in the world. However, the written assignments, quizzes, and exams are not group work unless you are instructed by me that they are. This means that if you do collaborate on a written assignment or an examination, it will be treated as a violation of academic integrity. Please do not be confused. Ask me if you have a question about this.

**Late Work Policy**

Be sure to pay close attention to deadlines—there will be no make-up assignments or quizzes, or late work accepted without a serious and compelling reason and instructor approval. All discussion assignments must be completed by the assignment due date and time. Late or missing discussion assignments will affect the student’s grade. There are no bonus assignments.

**Online Communication Guidelines**

- Do not dominate any discussion.
- Give other students the opportunity to join in the discussion.
- Avoid using vernacular and/or slang language. This could possibly lead to misinterpretation.
- Share tips with other students.
- Keep an open mind and be willing to express even your minority opinion. Minority opinions are to be respected.
- Think and edit before you push the “Send” button.
- Do not hesitate to ask for feedback.
- Using humor is acceptable ... indeed, encouraged.