

Environmental Law and Policy 1, 11:374:460 (3 credits) FALL 2025

Tuesday and Thursday – 2:00-3:20 pm

Foran Hall, 138-A, 59 Dudley Rd, New Brunswick, NJ

This course is in person, but some classes may be online, so for those classes please locate a stable internet connection and make sure that you have access to a computer (or phone) with a camera, microphone, and speakers.

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. Go to the syllabus and the modules to find the topic and preparation for each class meeting – be sure to check both.

Professor Cymie Payne - Cook Ofc. Bldg., 2nd floor, Cook Campus, 55 Dudley Road, New Brunswick, email: cymie.payne@rutgers.edu - Office (virtual or in-person) hours to discuss what we are studying or anything else, please email me.

Course Description: As students entering environmental science, policy and law professions you will be prepared 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 is an upper-level course covering US law and policy governing air, water and other natural resources, biodiversity and public health, how environmental law is made, applied, and un-made. We consider environmental law and policy at local, state, regional, national and transnational scales, with a primary focus on 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. Given the importance of justice in the United States, we will also consider environmental justice through the lens of the legal instruments we study. Given the significant changes in federal regulation this year, we will give special attention to our tripartite system of representative government, its checks and balances, and the US Constitution.

The class will examine sources of law, including the US Constitution, 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 By the end of this course, you will be able to:

- Begin a job or advanced study equipped with basic understandings of essential legal concepts and American governing institutions.
- Identify different kinds of environmental risks and the appropriate federal laws to manage them.
- Analyze and interpret evidence.
- Engage with regulatory, legislative and other democratic processes as a citizen, an advocate, a scholar or a policy professional.
- Consider career options related to environmental governance.
- Understand the connections between law and other fields of society and scholarship.

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.

Course Book and Technology: Required: James Salzman, Barton Thompson, Environmental Law and Policy (sixth edition, Foundation Press), <https://www.westacademic.com/Salzman-and-Thompsons-Environmental-Law-and-Policy-6th-Concepts-and-Insights-Series-9781685615727>, ISBN: 9781685615727.

- You cannot use a previous edition: the law has changed too much since then!
- **Student Discount:** Students can save 15% by buying your book directly from the publisher at www.westacademic.com by using the Discount Code: HESTUDENT. This used to include free ground shipping and instant 14-day digital access to most casebooks while your book ships – hopefully that is still true.

Other readings will be identified on the syllabus. These will be available on the web or University Library e-reserves. Let me know if you have any trouble obtaining the book.

Basis for Evaluation

15% Class participation: Attendance at every class and well-informed responses on the days when you are “on-call” for questions in class (schedule will be posted on Canvas). 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. You should attend every class. I realize that sometimes circumstances arise that make this difficult. I will excuse absences for reasons recognized by University policy and supported by appropriate documentation. If you have more than two unexcused absences, you should consider whether you are overextended and should drop the class and take it again during a semester when you have adequate time to do the work. If you have special circumstances, discuss a possible exception with me. See Canvas Syllabus, Announcements, and Modules for directions about preparations for class and class activities.

20% quizzes, discussions and other activities associated with individual classes.

25% 3 short written assignments which allow you to learn and practice skills (weighted differently): Finding the Law; Comment Letter; and Environmental Review. See syllabus for the dates when assignments will be explained and when they are due; see Canvas Assignments for directions and to submit.

40% 2 exams of equal weight. Note: Exam, paper and course grades are based on individual performance; I do not curve grades in this class. Exams are in-class, closed book, no technology allowed; you may have hard copy notes that you have prepared.

Note: All assigned work must be completed to achieve a passing grade in this course, so please do not try to game the points.

Bring to Class: Bring your textbook to class. Bring something to take notes. You may use a laptop, but **you won't be able to use your telephone in class for any reason.** Bear in mind that the mid-term and final exams will be **in-class** and **closed book.** You may have printed (hard copy) notes that you have made or that a study group in which you participate has made.

Prerequisite: There is no prerequisite course. 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 by spending thirty minutes with the [2024 New Jersey Citizen's Guide to Government by the League of Women Voters](#) (Canvas Module: Class 1).

→ This syllabus, along with course assignments and due dates, is 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 ←

		<p style="text-align: center;">Part I – United States and New Jersey Government</p> <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	Sept 2	<p>Class introduction</p> <p>Please read the syllabus and note any questions you have about the book, the course requirements, the schedule, etc.</p> <p>Please read Salzman & Thompson chapter 1.</p> <ul style="list-style-type: none"> ▪ What are the tensions and conflicting interests that S&T describe when they say the environmental field is “contentious”? ▪ What views of public lands did John Muir and Gifford Pinchot have? What is the difference between “preservation” and “conservation”, as S&T describe them? What legislative consequences did they have? ▪ What is the strongest legal protection of biodiversity in the world, according to S&T? (ESA) ▪ Why were technological ways of dealing with pollution (e.g., dilution) inadequate? What kinds of law were used in response? ▪ What was the law used in the <i>Scenic Hudson</i> case? What did the court require the Federal Power Commission to do? How did the case benefit environmental advocacy and the Hudson River? ▪ What were the successes of the 1970s and 80s environmental laws, and what were their drawbacks? <p>If you need to remind yourself of how the federal and state government work, look at the League of Women Voters of New Jersey, New Jersey Citizen’s Guide to Government</p>
2	Sept 4	<p>Regulation and Its Discontents</p> <p>Today we will continue our discussion of S&T Chapter 1, and we will add this reading, which foreshadows the radical changes to environmental regulation in 2025:</p> <p>Jefferson Decker, “Epilogue: Regulation and Its Discontents,” in <i>The Other Rights Revolution: Conservative Lawyers and the Remaking of American Government</i> (Studies in Postwar American Political Development) (2016).</p> <p>Questions we will discuss in class (no need to hand in anything but be prepared to participate):</p>

		<p>Explain how the “free rider problem” referred to in relation to the Affordable Care Act might also apply to fossil fuel use.</p> <p>Where do the “government’s power to tax” and the “Commerce Clause” derive from?</p> <p>More broadly, how do you understand the back and forth between what Decker calls liberal or left-leaning government and conservative government? What balance do you think is proper?</p>
Sept 5		LAST DAY TO REGISTER FOR THE SEMESTER
3	Sept 9	<p>Are we optimists or pessimists? (Optimists, of course)</p> <p>David R. Boyd, The Optimistic Environmentalist, Introduction, pp. xxi-xxv</p> <ul style="list-style-type: none"> ▪ What does Boyd mean when he says that he’s an “optimistic environmentalist”? Are you? ▪ What does Boyd base his optimism on? What do you base your attitude on? ▪ What did you think of his approach – was it personal, statistical, from experience, theoretical? ▪ What is the meaning of the sea otter story that he tells? <p>Look at the two "Vocabulary and Concepts" on Kinds of Law and Court Systems posted in this module</p> <p>“Finding the law” assignment explained in class today (due Sept 16)</p>
4	Sept 11	<p>Perspectives on Environmental Law and Policy</p> <p>Salzman and Thompson, chapter 2</p> <p>As you review this discussion of the forces that shape environmental problems, their solutions, and the tool of environmental law, consider how you would make the necessary tradeoffs that are often required and the decisions that have to be made under conditions of uncertainty.</p> <p>Thought experiment: Assume that the only factory making cell phones causes air pollution affecting those in a 50-mile radius of the factory. Would you be willing to pay an extra \$50 to purchase one the phones knowing that the factory was using the additional funds to clean the air by making the factory “clean”?</p> <p>Would any of these variations on the facts change your willingness to pay more?</p> <ul style="list-style-type: none"> ▪ If you lived 25 miles from the factory? ▪ If you lived 1,000 miles from the factory? ▪ If the factory were in a foreign country? <p>Should it matter where the factory was located? Why or why not?</p> <p>Is it possible to measure the importance of animal and/or plant preservation in light of the wants and needs of human beings?</p> <p>Considering the four analytical frameworks, see if you can identify an issue or situation in which each of the theories should take precedence over the others.</p> <p>What was LEBOR? Consider the questions posed in the LEBOR problem exercise.</p> <p>Take the Perspectives quiz</p>
		LAST DAY TO ADD/DROP COURSES WITHOUT A W NOTATION

		<p>Part II - Environmental Law made by the Judiciary</p> <p><i>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.</i></p>
	Sept 15	LAST DAY TO CANCEL SEMESTER WITH 100% REFUND
5	Sept 16	<p>Toxic Torts, Plater, et al., chapter 3, pp 75-96.</p> <ul style="list-style-type: none"> ▪ Make a note of each tort covered in this reading – trespass, private nuisance, negligence, ▪ For each, write down the elements that the plaintiff must prove in order to prevail (e.g., trespass requires proof that Defendant’s action caused a deposit of foreign matter on Plaintiff’s property, causing harm to the Plaintiff) ▪ You may find it helpful for each case discussed in this reading, to make a note of the legal claim (e.g., negligence), the alleged facts that would support the elements of the claim (e.g., use of improper gas drilling techniques and materials) ▪ Note the “terms of art” – normal language used in a particular way – such as “exclusive interest in exclusive possession of property” and “interest in use and enjoyment of property” ▪ Note the positive and negative aspects of using tort law to address environmental harms ▪ The <i>Boomer v Atlantic Cement Co.</i> case is iconic – what do you think of the tradeoff between the rights of property owners (and other residents) and the advantages of bringing new industries to a community? ▪ Look at comment #4 on p 83 – this explains two important legal concepts: intent and reasonableness. Do these seem like fair and appropriate ways to manage pollution? <p>“Finding the law” assignment due today</p>
6	Sept 18	<p>Toxic Torts, Plater, et al., chapter 3, pp 96-107</p> <ul style="list-style-type: none"> ▪ Consider how the substantial harm requirement might be a problem for adequately addressing pollution. What about environmental problems where each potential plaintiff suffers only a small – de minimis – harm, but which is cumulatively large? Consider the road salt problem, where each driver’s car is only damaged a little bit from the road salt used to deal with icy, snowy roads – or some of the effects of climate change, like a very hot, humid summer, that might make us annoyed but not enough to do something about it. ▪ What is the logic of shifting the burden of proof in <i>Summers v Tice</i> (Commentary #2, pp 103-104) ▪ How does the cost of litigation (hiring lawyers, consultants, experts, investigators, paying court fees) affect who can use toxic torts to protect their communities? How is it used as a weapon against activists? ▪ Who should be held responsible if there are multiple parties that contributed to a polluted site, particularly in light of the previous question about costs to plaintiffs? Consider the challenge of proving a causal link between a particular contaminant and a particular responsible party (RP).

		<ul style="list-style-type: none"> ▪ What are the pros and cons of toxic tort practice to manage pollutants? Is there a difference between its utility for well-known and novel pollutants?
		<p>Part III - Environmental Law made by Congress, State Legislatures, and the Judiciary</p> <p><i>Administrative law is the main source of environmental law today. Environmental legislation is the reason our air and water are better today in many places than in the 1970s. Unfortunately, today the financial costs of regulation are more evident than the health and environmental benefits (comparable to any avoided harm that requires an action we'd rather not take ... vaccines, designated drivers, etc.), so there is usually vigorous lobbying and litigation by business interests and property owners opposing restrictions on their activities.</i></p> <p><i>Our current president, representing those interests, vowed to dismantle environmental regulation. The extreme measures that his administration is taking create an unprecedented situation. Some of the regulations that are targeted are central to our study. A majority of current U.S. Supreme Court justices have introduced a new legal doctrine intended to constrain environmental regulation by the executive branch and the regulatory agencies that it oversees. We will discuss how judges, legislators, civil servants, and public interest non-profit organizations shape U.S. environmental governance.</i></p>
7	Sept 23	<p>The Practice of Environmental Protection: Regulatory Choice, Administrative Law</p> <p>S&T Chapter 3, Parts I-Instrument Choice and II-The Administrative Process</p> <ul style="list-style-type: none"> ▪ Instrument choice ▪ Basics of Administrative Law ▪ Recent changes in environmental law practice by the President, courts, and Congress ▪ Executive orders <p>When do you think that courts should defer to the President and agencies like EPA?</p>
8	Sept 25	<p>Environmental Impact Assessment - National Environmental Policy Act, Chapter 12</p> <p>In this class session we will learn how NEPA has traditionally functioned.</p>
9	Sept 30	<p>Environmental Impact Assessment - National Environmental Policy Act – Hannah Perls and Andrew Mergen, CleanLaw — Breaking Down Recent Changes to NEPA from Agencies, Congress, and the Courts</p> <p>Listen to this 45-minute podcast (a transcript is also provided)</p> <p>In this class session we will consider the changes to NEPA implementation.</p> <p>Additional reference: https://eelp.law.harvard.edu/tracker/nepa-environmental-review-requirements/</p>
10	Oct 2	<p>The Practice of Environmental Protection: Constitutional Issues, Indian Nations, Citizen Groups</p> <p>S&T Chapter 3, Part III-Constitutional Issues in Environmental Policy, IV. Indian Nations, V. How Citizen Groups Shape Environmental Law, and review Part II, The Administrative Process</p> <p>Pay careful attention to the following, and consider how these issues might apply to regulation of GHG pollution, specifically limiting GHG emissions from fossil-fuel fired power plants and coastal retreat:</p>

		<ul style="list-style-type: none"> ▪ Congressional Powers ▪ State Environmental Authority ▪ Legislative Delegation ▪ Regulatory Takings <p>Optional: Oliver A. Houck, Taking Back Eden: Eight Environmental Cases that Changed the World, chapter 1 (2010)</p> <p>>> Find and read Clean Air Act 42 U.S. Code § 7604</p> <ul style="list-style-type: none"> ▪ What does “participation” in environmental governance mean? ▪ Who gets to participate? Consider what is involved in using the tools described in these readings – who would you want to empower to use them? How would you do that? <p>What are specific requirements for bringing a citizen suit, as described in these readings?</p> <p>Comment Letter Assignment explained</p>
11	Oct 7 RECORDED LECTURE	<p>Clean Air Act, S&T Chapter 5, pp 121-142</p> <p>Before you begin the reading, download the “Analytical Framework for Environmental Statutes” and use it to analyze the Clean Air Act as you read</p>
12	Oct 9 ZOOM CLASS pc 446244	<p>Clean Air Act: S&T Chapter 5, 142-149</p> <p>Watch The Regulators documentary (50 min), considering the questions below</p> <p>Law making is a group activity, involving government employees, public interest groups, individuals, representatives of industry, and others. As you watch "The Regulators", note who each of these people represents: Henry Nickel, Barbara Brown, David Hawkins, and Gordon Anderson. What is the role of the national parks and of coal in these negotiations? What is New Source Review? What is the current PSD rule (see textbook, p. 125, for a more detailed explanation, see 83 FR 57324)? What role did Friends of the Earth play in launching this regulatory process? What do you think about the documentary's characterization of the government regulators as wielding enormous power?</p> <p>Reading on the Endangerment Finding</p> <p>Comment Letter Assignment due</p>
13	Oct 14 ZOOM CLASS pc 411176	<p>Enforcement - S&T Chapter 4</p> <ul style="list-style-type: none"> ▪ As you read about enforcement, bear in mind the constitutional requirement of due process and rule of law requirement of fairness <p>Work through question 2 on p. 117</p> <p>Analyze the Problem Exercise: Audit Immunity Policies, p. 101</p>
14	Oct 16	MIDTERM EXAM – in class, closed book, no technology
15	Oct 21	Water Pollution I, Chapter 7
16	Oct 23	Water Pollution II, cont.
17	Oct 28	Safe Drinking Water Act

		<p>Listen to the ELI SDWA podcast, in the module.</p> <p>Read the SDWA summary, in the module.</p> <p>Read pp. 233-235 in Salzman and Thompson (ch. 8, section B on Feasibility Statutes)</p> <p>Explanation of Environmental Review Exercises</p>
18	Oct 30	<p>Protecting Wetlands, Chapter 10</p> <p>Wetlands: An Overview of the Issues</p> <p>Relatively (im)permanent: The every-changing scope of the Clean Water Act</p> <p>And look at the definition in:</p> <p>33 USC 1344, 40 CFR 230.3, and 40 CFR 120.2</p> <p>Some questions to consider: How would you recognize whether a wetland is present? How would you determine whether it would be considered a wetland for legal purposes (for example, to know if you can build there)? What permit do you need to build in a wetland and what are the conditions? How does NEPA contribute to conservation of wetlands? How does the Clean Water Act contribute to wetlands protection? How does the Rivers and Harbors Act contribute to wetlands protection? Does each of these statutes have the same jurisdiction (that is, does each one apply to the same features)?</p>
	Nov 4	<p>ELECTION DAY – VOTE!</p> <p>NJ In-Person Early Voting will be open October 25 through November 2, 2025</p> <p>Polls will be open Monday-Saturday, 10:00 a.m. - 8:00 p.m. Sunday, 10:00 a.m. - 6:00 p.m.</p> <p>Voting Questions? Call 1-877-NJ-VOTER (1-877-658-6837)</p> <p>https://www.nj.gov/state/elections/vote.shtml</p> <p>https://ruvoting.rutgers.edu/</p>
19		The Endangered Species Act , Chapter 10
20	Nov 6	Waste Management, Part I-RCRA , Chapter 9
21	Nov 11	Waste Management, Part II-CERCLA , Chapter 9
22	Nov 13	Waste Management, CERCLA (cont)
23	Nov 18	Environmental Justice
24	Nov 20	Global Air Pollution – Regulatory Framework and Litigation Environmental Review Assignment due
25	Nov 25	The Public Trust Doctrine
	Nov 27	THANKSGIVING
26	Dec 2	<p>Cost Benefit Analysis in Agency Rulemaking and Review of Regulations</p> <p>See module for papers to read</p> <ul style="list-style-type: none"> ▪ Review pp 38-42 in Salzman and Thompson (5 pp) ▪ Do the Cost Benefit Analysis of Cloud Seeding Exercise ▪ Read SCC-Explainer (4 pp)

		Read Ackerman & Heinzerling, Pricing the Priceless, 150 U Penn L.Rev. 1553 (2002)
27	Dec 4	Review
28	Dec 9	FINAL EXAM , closed book, no technology, cumulative emphasizing material covered in the second half of the semester.

Disability Services:

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.

Artificial intelligence should not be used for this class. It is consistently inaccurate for legal work and use of AI has led to judges being obliged to withdraw opinions and lawyers being disbarred.

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. Late assignments will have 5% of points deduction per day (example: for an assignment worth 100 points that is due on October 19 but handed in on October 21, 10 points will be deducted, and a paper that would have received a B gets a C). There are no bonus assignments.

Basic Needs Resources

Any student who has difficulty affording groceries or accessing sufficient food, or who lacks a safe and stable place to live, is urged to contact the Rutgers Student Food Pantry and/or the Dean of Students (contacts below). Furthermore, please notify me if you are comfortable doing so, as I may be able to provide additional support.

Rutgers Student Food Pantry

<http://ruoffcampus.rutgers.edu/food/> (Links to an external site.)

848-932-5500

College Ave Student Center, Room 115 (126 College Ave). Check their website for hours and additional locations.

The Rutgers Student Food Pantry is dedicated to helping all Rutgers students in need of food, no questions asked. Students will be provided with groceries that typically last about one week.

SEBS Office of Academic Programs

For undergraduate students with academic questions: The Office of Academic Programs (OAP) is in Martin Hall and open to assist SEBS students. You may walk into Martin Hall (Room 109), call (848-932-3000 x2), email (advising@sebs.rutgers.edu), or use our Online Chat (sebs.rutgers.edu/advising) during business hours (M-F, 8:30-5 with Chat open from 9-4:30) for assistance.

Dean of Students Office

<http://deanofstudents.rutgers.edu/> (Links to an external site.)

848-932-2300

88 College Avenue, New Brunswick, NJ 08901

Mon-Fri, 8:30am-5:00pm

The Dean of Students Office at Rutgers University-New Brunswick provides solutions, services, and support to help students navigate Rutgers University. The Office serves as a student support network by providing advocacy, problem resolution, and critical incident intervention for those times when additional assistance is needed. Please call to schedule an appointment to meet with a representative from the Dean's office.

Students who are experiencing personal or health problems during the semester should contact the Office of Student Support (<https://studentsupport.rutgers.edu/>). This office, part of the Dean of Students office, assists students who have ongoing personal or medical issues and anticipate extended absences or missing multiple assignments.