



Emmett Environmental Law & Policy Clinic

HARVARD LAW SCHOOL

2020 Annual Roundup



SUMMARY OF CLINIC ACTIVITIES 2019-2020

During the past year, the Clinic both defended long-standing 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, the Clinic 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 its ground-breaking work educating citizen scientists of their rights, expanding and updating the website it created for citizen scientists, and routinely answering legal and policy questions submitted by citizen scientists through the Citizen Science Association. To round out its portfolio, the Clinic worked with municipalities and regional partnerships across the United States to develop model ordinances, litigation strategies, and policy analyses for climate change mitigation and adaptation.

**FROM CLINIC DIRECTOR,
WENDY B. JACOBS**



FIGHTING ENVIRONMENTAL ROLLBACKS

AMICUS BRIEFS

American Lung Association v. EPA **(D.C. Cir. No. 19-1140; filed April 23, 2020):**

The Clinic's brief argues that the Affordable Clean Energy (ACE) Rule promulgated by the Trump Administration to replace the Obama Administration's Clean Power Plan is inconsistent with the Trump EPA's factfinding 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.



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.

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.

County of Maui v. Hawai'i Wildlife Fund, et al. (U.S. 18-260; filed July 19, 2019): The Clinic's brief urged the U.S. 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.

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 the EPA's scientific advisory committees on the grounds that scientists who receive EPA grants 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).

"Since the earliest days of the Trump administration, the EPA started rolling back environmental rules that were put in place during the Obama era and otherwise undermining the role of science in its decision-making. That's been a large part of our work ever since."

- Deputy Director Shaun Goho

COMMENT LETTERS

National Environmental Policy Act (NEPA) Comments (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.

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 the EPA's proposed revisions to its Lead and Copper Rule.

EPA Science Advisory Board (SAB) Review of EPA Rulemakings (January 10, 2020):

The Clinic submitted comments to the 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 the SAB for pointing out scientific problems with both proposals but also indicated areas where the SAB's critiques were incomplete. The comments that the Clinic submitted directly to EPA on both of these proposals are discussed below.

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 the SAB to conduct a full review of EPA’s proposal “Strengthening Transparency in Regulatory Science”, to push back against EPA’s exclusion of important public health data when setting regulatory standards; the rule would undermine—not strengthen—EPA’s decision-making.

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 account for such biomarker imprecisions in the reassessment; account for genetic differences in susceptibility to methylmercury toxicity; and include cardiovascular impacts in the IRIS assessment.

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 Clinic’s 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.

Trump Administration’s Proposal to Weaken Clean Water Act Protections

(April 12, 2019): The Clinic’s comments on behalf of the National Parks Conservation Association oppose the Trump Administration’s proposal to narrow the definition of “Waters of the United States” under the Clean Water Act because it will substantially reduce Clean Water Act protections and increase regulatory uncertainty, with potentially catastrophic consequences for water quality across the country.



Students working in the Clinic

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 <https://citizenscienceguide.com/homepage>.

The Clinic has joined the Citizen Science Association (CSA) to continue to help educate and facilitate the work of citizen scientists. To that end, Deputy Director Shaun Goho presented at two Citizen Science webinars:

- **Collecting and Reporting Evidence of Environmental Law Violations: Tools that Work for Citizens** (June 13, 2019).
- **Introducing the CSA Law and Policy Working Group and its new Legal Question Submission Tool** (September 27, 2019). The webinar announced the creation of 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 its Clinic students available to answer such questions.

To that end, 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 its Citizen Science Manual website.

WHITE PAPERS

The Clinic, in partnership with the Environmental Defense Fund, released a paper in April 2019 entitled **Rates Could Fund Lead Pipe Replacement in Critical States**, which demonstrated the authority of water utilities in thirteen key states to use ratepayer funds to pay for full lead service line (LSL) replacement. LSLs—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 LSLs will need to be replaced, but it is expensive and a major challenge is to how to pay for these replacements. One logical approach is for water utilities to use rates paid by customers. We reviewed the laws of thirteen states, which collectively have an estimated 4.2 million LSLs, 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.



SUPPORTING INNOVATIVE MUNICIPAL 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:

- **Green Buildings:** Writing a model ordinance for reducing greenhouse gas emissions from the building sector, accompanied by a public whitepaper that (i) analyzes the authority of towns and cities in Massachusetts to mandate “net zero” building measures, and (ii) presents ideas for tax-based incentive programs.
- **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.
- **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.
- **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.
- **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 U.S.; 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.

“Towns and cities continue to innovate and push the envelope in pursuit of climate change mitigation and adaptation goals. In developing and supporting these initiatives, the Clinic considers how the role of local governments, and the lawyers advising them, will need to transform in order to address these and other complex challenges.”

– Senior Clinical Instructor Aladdine Joroff

CLIMATE SOLUTIONS LIVING LAB

The **Climate Solutions Living Lab**, developed and taught by Emmett Clinical Professor of Environmental Law and Clinic Director Wendy B. 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 green house 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, in addition, be scalable, replicable, fundable, permissible, and otherwise feasible to implement. Given that the academic semester is short, 12 weeks, a number of the Lab projects are taken up by the Clinic for further analysis and refinement before being distributed to entities interested in implementing the project.

The Spring 2020 Climate Solutions Living Lab Projects are:

- **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.
- **A pilot program to assist farmers in reducing nitrous oxide and carbon dioxide emissions, with a specific focus on the use of cover crops**, which improve soil health and water quality and reduce greenhouse gas emissions in several ways.
- **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.

The Lab has been featured in the *National Academies of Sciences, Engineering and Medicine Board on Environmental Change and Society's Update on June 4, 2019* and also in the *Environmental Law Institute's January/February 2020 edition of The Environmental Forum*.



Spring 2019 Climate Solutions Living Lab students, faculty and teaching fellows

STUDENT TESTIMONIAL

Heather Romero, J.D. '19, wrote about her multiple semesters in the Clinic in the following piece for the Clinical and Pro Bono Programs commencement newsletter: **From Student to Lawyer: My Time in the Environmental Law & Policy Clinic, HLS Clinical and Pro Bono Programs Blog, June 13, 2019.** Heather highlighted that 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 with Professor Jacobs, Aladdine Joroff, and Shaun Goho, HLS Commencement 2019

ABOUT THE CLINIC

The Emmett Environmental Law and Policy Clinic offers students an opportunity to do real-life and real-time legal and policy work. Clinic offerings include local, national, and international projects covering the spectrum of environmental issues. Depending on the project, students may undertake litigation and advocacy work by drafting briefs, preparing testimony, conducting research, developing strategy, 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 nonprofit organizations, while others work on-campus on cutting-edge projects and case work under the supervision of Clinical Professor and Director Wendy Jacobs, Deputy Director and Senior Clinical Instructor Shaun Goho, and Senior Clinical Instructor Aladdine Joroff.



Emmett Environmental Law & Policy Clinic

Harvard Law School

6 Everett Street, Suite 5116

Cambridge, MA 02138

(t) 617.496.2058

(f) 617.384.7633

(e) EmmettClinic@lists.law.harvard.edu

<https://clinics.law.harvard.edu/environment/>

Twitter: @HarvardEnvClin