



Emmett Environmental Law & Policy Clinic

HARVARD LAW SCHOOL

2022 Annual Report



Image Source: Mali Maeder, Pexels

THE YEAR IN THE EMMETT CLINIC 2021-2022

It is hard to believe that another busy year has already passed at the Emmett Clinic. In September 2021, we returned to campus for the first time in 18 months. Many of our students were 2Ls who had spent their entire 1L year taking classes remotely. While we all had to go through an adjustment period, it has been immensely rewarding to be working and teaching together in person again.

Although the Clinic continues to work on a wide variety of projects, last summer I worked together with the rest of the Clinic staff to identify three core themes that we would prioritize in our work. These are:

- Supporting the Transition to a Carbon-Free Energy System
- Assisting Municipalities and Tribes in Developing Innovative Climate Change Mitigation and Adaptation Strategies
- Advocating for Strong, Science-based Federal Environmental Regulations

FROM ACTING DIRECTOR SHAUN GOHO



In addition, as a cross-cutting goal, we aim to advance access, equity, and environmental justice in all of our projects. As you will see below, much of our ongoing work already fit within these themes. We also added new projects in each category. It was an exciting and productive year!

Spring 2022 also saw the return of the Climate Solutions Living Lab, the innovative interdisciplinary class created by founding Clinic Director Wendy Jacobs. Senior Staff Attorney Aladdine Joroff taught the course this spring.

The Clinic is undergoing several transitions this summer. It bids farewell to two Fellows, Tommy Landers and Leah Cohen. Tommy will be a trial attorney in the Environmental Enforcement section of the Department of Justice's Environment and Natural Resources Division, while Leah is joining Rich May, P.C., to support their energy efficiency and electrification work in Massachusetts. Leah and Tommy have both been outstanding members of the Clinic—skilled advocates, patient and supportive teachers, and wonderful colleagues. We are sorry to see them go but excited for them as they move on to new opportunities. We are also looking forward to the arrival of our new Clinical Fellow, Rosa Hayes, at the end of the summer. Rosa is a 2020 graduate of Yale Law School and is currently clerking for Judge Kermit Lipez on the First Circuit Court of Appeals.

"My participation in the Environmental Law & Policy Clinic, which included assisting with a rulemaking petition and comment letter, provided a great introduction to policy-focused work and an opportunity to explore environmental law topics in depth. Additionally, clear guidance and detailed feedback from Clinic supervisors made my semester at the Clinic a truly invaluable learning experience, allowing me to strengthen my skills in researching and writing about complex technical and legal issues." -- Hannah Fox, JD'23

THE WENDY B. JACOBS ENVIRONMENTAL LAW FUND

The law school has created the Wendy B. Jacobs Environmental Law Fund in memory of the Emmett Clinic's founding director. The fund will support the Clinic's work, including by providing a fellowship for students to work with the Clinic over the summer and covering project-related travel expenses. You can contribute to the fund [here](#).



SUPPORTING THE TRANSITION TO A CARBON-FREE ENERGY SYSTEM

The Clinic is working with local organizations to (i) analyze financing mechanisms for transitioning natural gas systems to non-greenhouse gas emitting sources, (ii) support implementation of innovative technologies, and (iii) draft legislation to advance new business models, funding, reporting and planning tools, and prioritizations to support the evolution of natural gas systems for a carbon constrained world. These partnerships include engaging in several proceedings before the Massachusetts Department of Public Utilities, including a utility proposal for geothermal district energy demonstration projects and an investigation into the role of local gas distribution companies in helping the Commonwealth achieve its 2050 net zero climate goal. In the latter, the Clinic filed comments on behalf of a group of Massachusetts municipalities and regional planning associations in 2021 and, in May 2022, proposed a framework for measuring equity in the proceeding, building on the Clinic's work on energy justice. In connection with this work, Clinic Senior Staff Attorney Aladdine Joroff testified before the Massachusetts Legislature's Joint Committee on Telecommunications, Utilities and Energy in support of H.3298, An Act relative to the Future of Heat in the Commonwealth.



Other Clinic projects in this area include researching both the requirements and opportunities for municipal electric utilities in Massachusetts to take steps to reduce greenhouse gas emissions, with a focus on strategies for integrating electric vehicles and net metering policies; road-mapping opportunities for municipal aggregation programs to participate in collective purchasing of renewable energy with non-governmental entities; and working with an international NGO to develop U.S. corporate and securities law strategies related to overseas coal plant investments.



Image Source: Connecticut Green Bank

The Clinic is also supporting efforts by the Post Road Foundation and its collaborators who were awarded a grant in October 2021 to integrate distributed energy resources under the Department of Energy's Connected Communities Program. Post Road, the SLAC National Accelerator Laboratory, Efficiency Maine Trust, New Hampshire Electric Cooperative, and Knowledge Problem LLC will receive \$6.65 million in federal funding to evaluate the ability of transactive energy, a novel, smart grid technology enabled by reliable, high-speed internet access, to meet the future energy needs of rural and urban communities across the U.S. The evaluation will be conducted by deploying a particular version of transactive energy, TESS, to three "Connected Communities" in Maine and New Hampshire and by observing their operations and performance over a multi-year period. The Clinic has been providing pro-bono support on regulatory considerations associated with transactive energy in Maine.

"The Environmental Law and Policy Clinic was an absolutely foundational part of my law school experience. I especially enjoyed having an in-house placement supervised by clinical faculty. Everyone was invested in providing a high-quality learning experience, developing meaningful and manageable projects, and working with students' schedules. During my two semesters, I learned so much about the logistics of lawyering, from writing memos to keeping track of new developments. I also developed a better understanding of how lawyers, clients, and natural systems interact at a higher level. For many of these lessons, the Clinic was my first and only exposure to them in law school. As I prepare to head out into the world of environmental law, what I've learned will have an impact on both the type of work I pursue and the skills I bring to the table." -- Samuel Yang, JD'22

ASSISTING MUNICIPALITIES AND TRIBES IN DEVELOPING INNOVATIVE CLIMATE CHANGE MITIGATION AND ADAPTATION STRATEGIES

Reducing Greenhouse Gas Emissions from the Building Sector: For several years, the Clinic has worked to help develop strategies for Massachusetts municipalities to address greenhouse gas emissions from the building sector. Clinic students analyzed pre-emption issues, wrote a white paper outlining the authority for municipal action, and drafted a model law for cities and towns to use as a starting point. The Clinic then helped the City of Boston draft its BERDO 2.0 building performance standard, enacted in October 2021, to reduce greenhouse gas emissions from existing buildings. The Clinic consults with other municipalities on their building sector initiatives. The Clinic also filed comments in March 2022 on the Massachusetts Dept. of Energy Resources' Net Zero Stretch Code Proposal, highlighting opportunities to preserve municipal flexibility and recommending strategies for minimizing compliance burdens for municipalities and building owners.



Image Source: Irasema-Mcallister, Pexels

Assisting Coastal Municipalities with Climate Resilience Planning: The Clinic has worked in this area for years, starting with a landmark white paper for the City of Boston more than a decade ago. The Clinic's recent work includes advising municipalities and coalitions of local governments on procurement and cost-sharing for adaptation projects, research on nature-based solutions, and an analysis of shoreline infrastructure ordinances to identify opportunities to increase resilience to coastal risks through science-based standards and the incorporation of nature-based solutions.



Image Source: Pexels/Pixabay

Assisting Tribes with Renewable Energy Development: For over a year now, the Clinic has been assisting the Yurok Tribe of northern California with the implementation of its tribal energy plan, which involves installing both on-grid and off-grid solar and developing one or more clean energy microgrids. The Clinic conducted research into potential regulatory barriers, sources of funding, and options for the legal structure of the tribal energy entity. In connection with the Climate Solutions Living Lab course, the Clinic is analyzing opportunities for agrivoltaic systems on tribal land.

ADVOCATING FOR STRONG, SCIENCE-BASED FEDERAL ENVIRONMENTAL REGULATIONS

Throughout the Trump administration, the Clinic, together with its clients and partners, submitted comment letters and amicus briefs opposing the administration's most significant rollbacks across all areas of environmental and energy law. Under the Biden administration, we continue to advocate for strong environmental protections. Sample projects include:

Clean Air Act Rulemakings: On June 14, 2021, the Clinic submitted comments on behalf of the Chesapeake Bay Foundation and National Parks Conservation Association [supporting EPA's decision to rescind the Trump-era regulation regarding the use of cost-benefit analyses in Clean Air Act rulemakings](#). The letter supported EPA's conclusion that the rulemaking was unnecessary, unresponsive to any real problem and duplicative of existing EPA guidance documents. The letter also addressed how the regulation's disregard of the complex ways in which pollutants interact within and across environmental media would undermine environmental protections and the existing regulatory programs that are essential to public health, protection of ecosystems and wildlife, and local economies. Rescinding the regulation reduces this risk and associated negative environmental health and safety risks that often disproportionately affect children and residents of environmental justice communities.

Mercury and Air Toxics Standards: The Clinic has worked for several years with a group of scientists to submit comment letters and amicus briefs supporting the regulation of hazardous air pollutant emissions from coal-fired power plants. On April 11, 2022, the Clinic filed comments on behalf of a group of leading scientists [supporting the Environmental Protection Agency's proposal to reaffirm earlier findings underlying the agency's regulation of mercury and other toxic air pollutant emissions from coal-fired power plants](#). The Clinic's comments identify areas for improvement in the scientific analysis and benefits quantification - including using a state-of-the-science assessment of mercury deposition attributable to power plants, and considering how power plants' emissions affect individuals' cumulative exposure to mercury - any such improvements would only strengthen the "appropriate and necessary" finding.



Image Source: Pexels/Pixabay

National Environmental Policy Act (NEPA): On November 22, 2021, the Clinic submitted comments to the Council on Environmental Quality (CEQ) supporting its proposed partial reversal of the Trump administration's weakening of the National Environmental Policy Act (NEPA) implementing regulations. The Clinic's comments argue that agencies are required under NEPA to examine cumulative and indirect impacts (as well as direct effects) when determining the environmental impacts of a project and preparing an Environmental Impact Statement (EIS). Accordingly, the Trump administration's elimination of these categories of impacts from the regulations was illegal and the proposal is correct to reverse those changes. In addition, the Clinic's comments support CEQ's changes to the "ceiling" provisions, which impermissibly limit agencies' discretion to provide additional procedures beyond the minimum standards identified by CEQ.

Clean Water Act Protections: On February 7, 2022, the Clinic filed comments on behalf of the National Parks Conservation Association supporting the Biden Administration's proposal to revise the definition of "the waters of the United States" under the Clean Water Act. The proposal would restore prior protections that were in place before Trump administration rollbacks that reduced protections for many streams and wetlands. In addition to supporting the proposal, the Clinic provided recommendations to improve it,



Image Source: Pexels

such as adding more detail and explanation in the regulatory language about upstream waters' functions of reducing pollution in downstream waters; establishing categories of waters that are jurisdictional by rule; and restoring protections to the categories of "other waters" protected under the 1986 regulations based on how the use, degradation, or destruction of the water could affect interstate or foreign commerce.

I've learned more at the Clinic about how to be a lawyer than anywhere else at HLS in large part because the mentorship students receive at the Clinic is unparalleled. The guidance and encouragement that my Clinic supervisor provided throughout my clinical experience was invaluable. My supervisor provided me with detailed substantive and constructive feedback that dramatically improved my skills as a writer and researcher. I emerged from the Clinic a better law student and more imaginative about how to incorporate environmental law in my career. For this I am grateful."

-- Victoria Li, JD'23

Farm Bill Recommendations: The Clinic is continuing its collaboration with the [Farm Bill Legal Enterprise](#), a consortium of several other law school clinics and academic research programs (led by the Harvard Food Law and Policy Clinic) to analyze the Farm Bill and develop policy recommendations for reforms in advance of the legislative debate over the next Farm Bill. The Clinic’s work focuses on the Farm Bill’s impact on climate change mitigation and resilience.



Image Source: Pexels/Pixabay

Regulation of the Toxic Pesticide Paraquat: On June 1, 2022, the Clinic [submitted an amicus brief on behalf of three leading experts in support of a challenge to an action by EPA involving the toxic herbicide paraquat dichloride](#) (often simply called “paraquat”). Specifically, EPA approved paraquat’s use for the next fifteen years under certain conditions, despite the risks paraquat poses to public health. The Clinic filed the brief on behalf of J. Timothy Greenamyre, Michael Okun, and Beate Ritz. They are medical doctors and scientists with expertise in neurology or epidemiology, and they have studied and written extensively about the link between toxic substances like paraquat and neurodegenerative disorders—in particular, Parkinson’s disease. The brief argues that EPA failed to adequately recognize the paraquat-Parkinson’s link when approving paraquat’s continued use.



Image Source: Steve Johnson, Pexels

Lead in Drinking Water: Over several semesters, the Clinic has worked on developing strategies for reducing exposure to lead in drinking water. Previous work includes white papers on [identifying best practices for water sampling protocols](#) and [on the authority of water utilities in 13 key states to use ratepayer funds to pay for complete lead service line replacements](#), and a [February 2020 comment letter](#) focused on the health equity, environmental justice,

and civil rights aspects of the EPA’s proposed revisions to its Lead and Copper Rule (LCR), the primary federal regulation addressing lead in drinking water. In 2021, the Clinic worked with the Environmental Defense Fund (EDF) to develop a model Title VI administrative complaint that communities could file with EPA to challenge their water utility’s lead service line removal practices. EDF and other groups adapted this complaint and in January 2022 filed a complaint against Providence, RI, which EPA subsequently accepted for investigation.

CLIMATE SOLUTIONS LIVING LAB

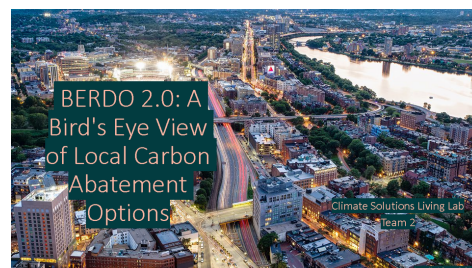
The [Climate Solutions Living Lab](#) combines pedagogy and applied research to advance the climate change goals of Harvard and other institutions, governments and companies. Advanced students from graduate schools across Harvard University work in interdisciplinary teams to advance new, replicable and innovative steps to redress climate change. Students scrutinize the feasibility, scalability, and social justice impacts of climate change measures from multiple perspectives, including economic, technological, legal, and health. Participants are pushed to think outside their expertise as they collaborate with peers from diverse academic backgrounds on complex, real world challenges. The students' final work product includes analyses and tools that can be tested and further refined by on- and off-campus partners of the Living Lab.



Climate Solutions Living Lab Class - Spring 2022

This year, Living Lab students worked on projects regarding:

- [Integrating carbon removal into climate change mitigation commitments](#)
- [Valuing co-benefits in aggregated purchasing of carbon offsets](#)
- [Combining solar generation and agricultural activities to promote synergistic land uses](#)
- [Designing municipal level programs to reduce greenhouse gas emissions from the building sector](#)



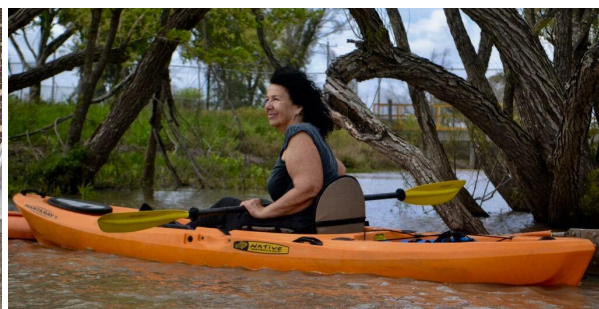
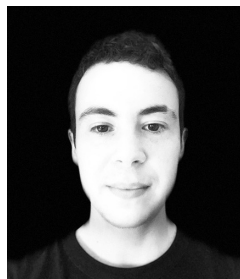
Material from the Climate Solutions Living Lab is available on the [Clinic's website](#).

The Climate Solutions Living Lab is taught by Aladdine Joroff and co-led by Debra Stump. In Spring 2022, Henry Tepper joined the course as an expert advisor and team supervisor. The program was developed and led by the late Professor Wendy Jacobs, who taught the course from 2017-2020.

CLINIC LUNCH EVENTS

With the return to campus, the Clinic resumed its series of lunch events to introduce students to different aspects of environmental law practice. Our events and featured speakers during the 2021-22 academic year were:

- **Innovative Municipal Energy Programs**, featuring Bradford Swing, Director of Energy and Policy Programs for the City of Boston
- **Climate Divestment and the Climate Necessity Defense**, featuring Alex Marquardt (JD'16), Co-Founder and Staff Attorney, Climate Defense Project
- **The San Antonio Bay Estuarine Waterkeeper v. Formosa Plastics Case**, featuring Diane Wilson, Executive Director and Waterkeeper for Plaintiff San Antonio Bay Estuarine Waterkeeper, and Amy R. Johnson, Lead Counsel on this case
- **A Career in Public Service with Lois Schiffer**, former General Counsel of the U.S. National Oceanic and Atmospheric Administration and Assistant Attorney General for the Environment and Natural Resources Division of the U.S. Dept. of Justice
- **Using Environmental and Civil Rights Law to Address Lead in Drinking Water**, featuring Dr. Tom Neltner, Chemicals Policy Director at the Environmental Defense Fund



Images courtesy of the speakers

"Working in the Environmental Law and Policy Clinic was one of the highlights of my law school career. I received invaluable training on drafting and filing briefs, as well as researching and deciphering complex agency regulations. My legal research and writing skills have improved significantly because of my supervisor's guidance. Although I did not have a background in environmental or administrative law prior to working in the Clinic, my supervisor was always available to answer any questions I had and made me feel more confident in my ability to practice environmental law in the future." -- Natalie Sowinski, JD'22

EXTERNSHIPS

In addition to the work that our students perform under the direct supervision of Emmett Clinic faculty and staff, some students work off-campus in the offices of federal, state, or local government agencies or with non-profit environmental groups. This year's placements included: the U.S. Department of Justice (Environment and Natural Resources Division, Environmental Crimes Section, and Environmental Enforcement Section), U.S. Department of Interior – Office of the Solicitor, the Massachusetts Attorney General's Office (the Environmental Protection Division and the Energy and Telecommunications Division), Earthjustice, Federal Energy Regulatory Commission (FERC), Alternatives for Community and Environment (ACE), and the Council on Environmental Quality (CEQ).

ABOUT THE CLINIC

The Emmett Environmental Law and Policy Clinic at Harvard Law School offers students the opportunity to practice environmental law through work on a variety of litigation, administrative, legislative, and policy projects. The Clinic works with scientists, medical professionals, nonprofit and public interest organizations, and government clients on environmental and energy issues at the federal, state, and local level. The work includes writing briefs and comment letters, drafting climate change mitigation and adaptation regulations and policies for municipalities, preparing guidance documents and manuals for non-lawyers, drafting model legislation, and preparing policy papers. The Clinic develops novel strategies to address thorny environmental problems; investigates new cases; works with scientific, economic, and policy experts to help them present their views about the impacts of legal reforms; advises citizen scientists; and convenes meetings of policy-makers and regulators. 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 the Clinic's faculty and staff.



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