ENVS 027 | U.S. Environmental Law and Policy

Swarthmore College
Spring 2027

Course Instructor
Dr. Melissa Tier, *Visiting Assistant Professor*
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Class Time/Room
Tuesdays, 7-10 pm
Singer Hall, Rm TBA

Course Description

This course will provide an overview of environmental legislation and case law in the United States. Students will learn about the underlying administrative law system that governs agency and regulatory action. The course will cover a variety of foundational environmental statutes such as the Clean Air Act, Clean Water Act, and the Endangered Species Act – as well as contemporary climate laws and cases. Students will develop analytical skills regarding the purpose of environmental law in the U.S. and regulatory processes at the federal, state, and local levels. The course will also include discussions of environmental law from the perspectives of the environmental justice movement and Indigenous sovereignty.

Learning Objectives

1. **Explain the historical development and foundational principles of U.S. environmental law**, including its common law, constitutional, and statutory foundations.
2. **Read and interpret environmental statutes, regulations, and judicial opinions**, with attention to legal authority, agency rulemaking, and judicial review.
3. **Compare approaches to environmental protection and climate policy**, examining how federal, state, local, and Tribal institutions shape policy design and implementation.
4. **Evaluate the environmental, public health, and equity implications of legal and policy decisions**, drawing on environmental justice perspectives and principles of Indigenous sovereignty.
5. **Develop and defend policy recommendations and model legislation**, using evidence-based arguments.

Primary Textbooks (all readings will be provided on Moodle)

- **Plater:** Plater et al. (2026). *Environmental Law & Policy: Nature, Law & Society*, 6th edition.
- **S&T:** Salzman & Thompson. (2024). *Environmental Law and Policy,* 6th edition.

Assignments

Three in-class, short-answer quizzes (10% each)	30%
Policy briefing presentation (choose 1 topic from Weeks 11-13)	15%
Model law presentation outline	5%
Model law presentation	15%
Final exam (3 long-answer questions)	20%
Class participation	15%

Note on Guest Speakers

Each of our 3 tentatively invited guest speakers (Weeks 2, 6, and 12) will join on Zoom for 1 hour of that week's 3-hour seminar. They will be asked to provide short remarks, with substantial time remaining for questions and discussion.

Week 1 – Introduction to the U.S. Environmental Law and Policy Regime

- Introduce the institutions and recurring challenges that shape U.S. environmental law, including scientific uncertainty, competing interests, and federalism. Trace how legislatures establish legal authority, agencies implement statutes, and courts review government action.
- **Readings:**
  - Plater Ch2.B (Beyond Kepone: Tracking Several Decades of Environ. Law Development)
  - Plater Ch6.A (The Evolution of the Administrative Governing Process)
  - Plater Ch6.B (Administrative Process and Law in a Nutshell)
  - S&T Ch2.I (Basic Themes of Environmental Law)
  - CRS. (2017). *A Brief Overview of Rulemaking and Judicial Review*

Week 2 – Precedents: Conservation, Industrialization and Nuisance Laws, and Indigenous Sovereignty

- Trace how conservation, industrialization, and Indigenous dispossession shaped U.S. environmental law. Examine common law remedies, the public trust doctrine, and treaty rights as distinct foundations for protecting land, water, and communities.
- **Likely Guest Speaker:** Adrienne Benally (PhD) | Professor of Environmental Studies at Swarthmore College; enrolled member of the Navajo Nation (Diné)
- **Readings:**
  - Plater Ch3.A.1-2 (Tort Causes of Action in the Environmental Arena)
  - S&T Ch10.II (The Public Trust Doctrine)
  - Gilio-Whitaker. (2019). *As Long as Grass Grows*, Ch3 (The Complicated Legacy of Western Expansion and the Industrial Revolution)
  - Mills. (2025). The Supreme Court's old habits in a new era? Native Nations, statehood, and an Indigenous-led future for natural resources. *Standford Law Review Online.* **Selections:** Introduction and Part 1 (Treaties, Statehood, and the Court)

Week 3 – Foundational Environmental Regulation

- Compare foundational environmental laws in the U.S., focusing on what they regulate, which institutions administer them, and how their principal mechanisms work. Examine standards, permits, environmental review, species protections, and constitutional environmental rights.
- **Readings:**
  - Plater Ch5 (An Overview of Environmental Regulation in the United States)
  - S&T Ch3.III.A-C (Constitutional Issues in Environmental Policy)
  - Plater Ch10.A (NEPA, The National Environmental Policy Act)
  - Plater Ch11.A (The Clean Air Act: History and Structure)
  - Plater Ch12.A (Overview of the Clean Water Act)
  - S&T Ch10.IV (The Endangered Species Act)

Week 4 – Enforcing Foundational Environmental Protection

- Examine how enforcement and legal liability give environmental protections practical effect. Compare approaches to implementation through hazardous waste cleanup, emissions trading, international ozone protection, and PA environmental rights litigation.
- **Readings:**
  - S&T Ch4.I-III (Enforcement)
  - Plater Ch6.E.1-2 (Citizen Enforcement in the Courts)
  - Plater Ch20.A.1 (Basics of Statutory Remedial Liab. for Cleanup of Hazardous Materials)
  - S&T Ch5.I.C (The CAA: Trading)
  - S&T Ch6.I (Ozone Depletion)
  - PennFuture. (2024). *The People Have a Right: A Brief Overview of ERA Case Law*

Week 5 – Early Climate Governance: International Agreements and U.S. Climate Politics

- Trace U.S. climate policymaking from the late 1980s through 2015, placing domestic legislative and executive efforts in the context of emerging international commitments. Examine how political coalitions, economic interests, and institutional constraints shaped federal policy, including the failure of Waxman-Markey and the turn toward executive action.
- **Readings:**
  - Plater Ch24.B (International Conferences & Soft Law)
  - Mildenberger. (2020). *Carbon Captured: How Business and Labor Control Climate Politics,* Ch4 (U.S. Policy Inaction, 1988-2006)
  - Mildenberger. (2020). *Carbon Captured: How Business and Labor Control Climate Politics,* Ch5 (U.S. Climate Action, 2007-2015)

Week 6 – Origins of the Environmental Justice and Indigenous Environmental Justice Movements

- Trace how EJ movements challenged unequal exposure and government protection, and examine the incorporation of their concerns into federal policy. Consider how Indigenous sovereignty, treaty rights, and relationships to land challenge and extend prevailing EJ frameworks.
- **Likely Guest Speaker:** Nicky Sheats (PhD, JD) | Researcher at Kean University; Senior Policy Fellow & Lecturer at Princeton University, and Founding Member of the NJ EJ Alliance.
- **Readings:**
  - Bullard. (2001). EJ in the 21st century: Race still matters. *Phylon, 49*(3/4), 151-167
  - Bullard & Wright. (2012). *The Wrong Complexion for Protection*, Ch5 (Response to Toxic Contamination)
  - Gilio-Whitaker. (2019). *As Long as Grass Grows*, Ch1 (Environmental Justice Theory and Its Limitations for Indigenous Peoples)
  - White House. (1994). *Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Week 7 – The Paris Agreement, Nationally Determined Contributions, and the Clean Power Plan

- Examine how the Paris Agreement organizes national climate commitments through pledges, transparency, and review. Connect U.S. emissions targets to domestic regulatory authority through the Clean Power Plan and *Massachusetts v. EPA*.
- **Readings:**
  - Plater Ch17.A (Introduction to Climate Change Law)
  - Plater Ch17.B.1 (*Massachusetts v. EPA*)
  - Keohane & Oppenheimer. (2016). Paris: Beyond the climate dead end through pledge and review? *Politics and Governance, 4*(3), 142-150
  - UNFCCC. (2015). *The Paris Agreement*
  - White House. (2015). *Fact Sheet: U.S. Reports Its 2025 Emissions Target to the UNFCCC*
  - EPA. (2015). *Fact Sheet: Overview of the Clean Power Plan*

Week 8 – Recent Environmental Case Law and Legal Doctrines

- Compare the major questions doctrine in *West Virginia v. EPA* with the overruling of Chevron deference in *Loper Bright*. Evaluate competing views of administrative expertise and judicial vs. legislative review – and the implications of contemporary debates for environmental policy.
- **Readings:**
  - S&T Ch3.II (The Administrative Process)
  - Plater Ch6.D (Who Gets to Interpret Statutes?)
  - Plater Ch17.B.4 (Clean Power Plan)

- CRS. (2024). *Loper Bright Enterprises v. Raimondo and the Future of Agency Interpretations of Law*. **Selections:** Executive Summary; Introduction through The Dissent; Implications for Executive Branch Agencies through Considerations for Congress

Week 9 – Legislation, Mandates, and Rulemaking (2021-2025)

- Examine how climate laws, executive orders, and implementation guidance shaped the Biden Administration's environmental agenda. Use the assigned documents to distinguish policy commitments from the legal authorities and administrative steps needed to implement them.
- **Readings:** This week's readings cover 8 documents released by the Biden White House related to the Administration's wide-ranging climate and environmental policies.
  - White House. (2021). *Executive Order 14008: Tackling the Climate Crisis at Home and Abroad* – Sections 201-203 & Sections 219-223
  - OMB. (2021). *M-21-28 Interim Implementation Guidance for the Justice40 Initiative*
  - White House. (2021). *Fact Sheet: The Bipartisan Infrastructure Deal Boosts Clean Energy Jobs, Strengthens Resilience, and Advances Environmental Justice*
  - White House. (2022). *By the Numbers: The Inflation Reduction Act*
  - White House. (2022). *Fact Sheet: Inflation Reduction Act Advances Environmental Justice*
  - White House. (2023). *Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All*
  - White House. (2023). *Executive Order 14112: Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination*
  - White House. (2024). *Fact Sheet: President Biden Sets 2035 Climate Target Aimed at Creating Good-Paying Union Jobs, Reducing Costs for All Americans, and Securing U.S. Leadership in the Clean Energy Economy of the Future*

Week 10 – Contemporary Policy Retrenchment and Challenges to the Rule of Law (2025-2027)

- Evaluate changes in environmental and climate policy through executive action, regulation, funding, enforcement, and agency capacity. Examine the legal procedures and constraints governing policy reversal, the obligations that remain, and the avenues available to challenge government action.
- **Readings:**
  - White House. (2025). *Executive Order 14154: Unleashing American Energy*
  - S&T *Update Memo: Revisions to Concepts & Insights in Environmental Law* (2026)
  - Bullard, Huang, & Powers. (2026). *Justice Imperiled: The Rise and Fall of Federal Environmental Justice,* Part II (The Second Trump Administration's Elimination of Federal Environmental Justice Initiatives and Infrastructure)
  - GAO. (2026). *Funding Status: Infrastructure Investment and Jobs Act and Inflation Reduction Act.* **Selections:** p.4-10 and p.16-24
  - Climate Action Tracker, *USA Oct 2026 Update,* Policies & Actions section

Week 11 – Carbon Pricing Initiatives at the State and Regional Level

- Compare state and regional carbon pricing programs and assess how their design affects emissions, revenue use, and pollution burdens. Examine environmental justice critiques of carbon pricing, as well as the legal and political challenges to sustaining these programs.
- **Group 1 Policy Briefings:** Select a real state or regional carbon pricing policy – and brief the class ("policymakers") on its design, implementation, and environmental and distributional tradeoffs.

- **Readings:**
  - Plater Ch16.B.2 (Flawed Trading Systems and Hot Spots)
  - Resources for the Future. (2022). *California Cap and Trade Explained*
  - RGGI. (2026). *About the Regional Greenhouse Gas Initiative*
  - NRDC. (2025). *Unprecedented: Pennsylvania's RGGI Repeal*
  - Sheats. (2017). Achieving emissions reductions for EJ communities through climate change mitigation policy. *William & Mary Environmental Law and Policy Review, 41*(2), 377-402

Week 12 – Municipal Planning for Housing and Hazard Mitigation

- Examine how land use authority, property rights, housing needs, and public funding shape municipal responses to flood risk. Evaluate the equity implications and other tradeoffs of infrastructure investment, development decisions, and voluntary relocations.
- **Likely Guest Speaker:** Eduardo Bhatia (JD) | Visiting Professor of Public Affairs at Princeton University; Former President of the Senate of Puerto Rico
- **Group 2 Policy Briefings:** Select a real municipal hazard mitigation policy impacting housing – and brief the class ("policymakers") on its design, implementation, and implications for affected residents.
- **Readings:**
  - S&T Ch3.III.D (Regulatory Takings)
  - Plater Ch9.A (Eminent Domain Condemnations)
  - Plater Ch18.B.1.a-c (Domestic Management of Ocean and Coastal Resources)
  - Plater Ch18.D.4 (Sea Level Rise)
  - Siders. (2019). Social justice implications of US managed retreat buyout programs. *Climatic Change*, *152*(2), 239-254
  - NYC, *Jewel Streets Neighborhood Plan* (2025). **Selections:** Introduction; Goals & Strategies: Study Area

Week 13 – Siting to Reduce Cumulative Impacts and Disproportionate Burdens

- Compare NJ's cumulative impact permitting framework with the environmental review and Tribal rights disputes surrounding the Dakota Access Pipeline. Examine how legal procedures and substantive protections can influence siting decisions and prevent disproportionate burdens, and also consider these discussions in the recent context of data centers.
- **Group 3 Policy Briefings:** Select a real siting or permitting policy – and brief the class ("policymakers") on how it addresses cumulative impacts, disproportionate burdens, or Tribal rights.
- **Readings:**
  - Revesz. (2022). Air pollution and environmental justice. *Ecology Law Quarterly.* **Selections:** Introduction, Part I (The Environmental Justice Movement's Expanding Focus); Part II (Distribution of the Harms of Particulate Matter Pollution)
  - Sheats, Baptista, Lopez-Nunez, & Miles. (2025). They said it couldn't be done: A case study of New Jersey's landmark EJ law (S. 232). *Environmental Justice, 18*(6), 366-373
  - Harvard Law School, *The Dakota Access Pipeline (DAPL) Regulatory Tracker* (2026)
  - Standing Rock Sioux Tribe, *Press Release of New Federal Lawsuit Against U.S. Army Corps of Engineers and PHMSA over Dakota Access Pipeline Record of Decision* (2026)
  - Center for Biological Diversity et al. (2026). *Protect Communities from Data Center Fast-Tracking in Permitting and Other Legislation.* Letter to Congress
  - WE ACT for Environmental Justice. (2026). *Environmental Justice Principles: Data Centers*

Week 14 – Final Presentations on Model Laws

- Draft, present, and defend a short, original model law – explaining its legal foundations, implementation and enforcement mechanisms, and anticipated environmental and equity effects.