

ERG 290 — U.S. Climate Policy, Law, and Politics

3 Units | Spring 2015 | CCN 27230

Tuesday / Thursday 3:30 to 5:00pm

Hearst Memorial Mining Building, Room 310

Instructor:

Danny Cullenward, JD, PhD
Philomathia Research Fellow
Berkeley Energy and Climate Institute

Contact Information:

452 Sutardja Dai Hall
dcullenward@berkeley.edu
510-664-7133 office

Office Hours:

TBD

Description:

This course offers an interdisciplinary, graduate-level survey of historical and current efforts to regulate emissions of greenhouse gases in the United States. Students will read primary legal documents—including statutes, regulations, and court cases—in order to evaluate the forces shaping American climate policy. Although the class will focus on the intersection of climate policy and the legal system, no specific background in law is necessary.

Requirements:

Students are expected to attend every class session, complete all of the assigned readings, and participate in class discussions. Please notify me in advance of any planned absences or if you require special accommodations. Prior to each class session, group of students will be assigned to respond to detailed questions about the day's reading. Students may choose between completing a take-home essay exam and working with the instructor on a term paper addressing a relevant topic of the student's choosing.

Grading:

In-class participation:	20%
Reading response:	20%
Paper or take-home exam:	60%

Reading:

The reading assignments for each week are listed below. Note that there is no textbook or course reader. All of the reading is available online at no cost to the student. Most of the reading is available from direct links as indicated below; court opinions will be posted on a class website.

PART I: Introduction and Context**(Week 1) International Climate Policy**

- United Nations, FCCC/CP/2009/11/Add.1, Decision 2/CP.15, pp. 4-9 (Copenhagen Accord) ([link](#)).
- United Nations, FCCC/CP/2009/11/Add.1, Decision 2/CP.15 (Copenhagen Accord), Appendix I: Quantified economy-wide emissions targets for 2020 ([link](#)). Skim the commitments, paying close attention to the U.S. target.
- IPCC Working Group III, CLIMATE CHANGE 2014: MITIGATION OF CLIMATE CHANGE, SUMMARY FOR POLICYMAKERS (2014) ([link](#)).

(Week 2) U.S. Emissions and Some Basic Policy Options

- U.S. Environmental Protection Agency, Inventory of Greenhouse Gas Emissions, 1990-2012, Executive Summary ([link](#)).
- Lawrence H. Goulder and Andrew Schein, *Carbon Taxes vs. Cap and Trade: A Critical Review*, 4(3) CLIMATE CHANGE ECONOMICS 1350010 (2014) ([link](#)).
- Ann E. Carlson, *Designing Effective Climate Policy: Cap-and-Trade and Complementary Policies*, 49 HARVARD JOURNAL ON LEGISLATION 207 (2012) ([link](#)).

PART II: State Policy**(Week 3-4) California's Climate Policy**

- A.B. 1493, Vehicular emissions: greenhouse gases (Pavley) ([link](#)). Skim the entire document; focus on Section 3.
- S.B. 1368, The Emissions Performance Standard ([link](#)). Skim the entire document; focus on Section 8341(d)(1).
- A.B. 32, The Global Warming Solutions Act of 2006 (Pavley) ([link](#)).

- California Air Resources Board, Climate Change Scoping Plan (December 2008) ([link](#)).
- Michael Wara, *California's energy and climate policy: A full plate, but perhaps not a full model*, 70(5) BULLETIN OF THE ATOMIC SCIENTISTS (forthcoming) ([link](#)).
- *Association of Irrigated Residents v. CARB*, 206 Cal. App. 4th 1487 (Cal. Ct. App. 2012).
- *POET, LLC v. CARB*, 218 Cal. App. 4th 681 (Cal. Ct. App. 2013).

(Week 5) State Policy and the Dormant Commerce Clause

- U.S. Constitution, Art. I § 8, clause 3 ([link](#)).
- *Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070 (9th Cir.), *cert. denied* 134 S.Ct. 2875 (June 30, 2014).
- *North Dakota v. Heydinger*, 2014 WL 1612331 (D. Minn. Apr. 18, 2014).
- *Energy and Environmental Legal Institute v. Epel*, 2014 WL 1874977 (D. Colo. May 9, 2014).

(Week 6) Introduction to Carbon Markets

- World Bank, Infographic: Carbon Markets of the World (2014) ([link](#)).
- A. Denny Ellerman, Claudio Marcantonini, and Aleksander Zaklan, *The EU ETS: Eight Years and Counting*, European University Working Paper RSCAS 2014/04 (2014) ([link](#)).
- Michael Wara, *Is the Global Carbon Market Working?*, 445 NATURE 595-96 (2007) ([link](#)).
- Richard G. Newell, William A. Pizer, and Daniel Raimi, *Carbon Market Lessons and Global Policy Outlook*, 343 SCIENCE 1316, 1316-17 (2014) ([link](#)).
- Danny Cullenward and Michael Wara, *Carbon markets: Effective policy?*, 344 SCIENCE 1460 (2014) ([link](#)).
- Richard G. Newell, William A. Pizer, and Daniel Raimi, *Carbon markets: Effective policy?—Response*, 344 SCIENCE 1461 (2014) ([link](#)).

(Week 7) California's Carbon Market

- California Air Resources Board, Overview of ARB Emissions Trading Program ([link](#)).
- Danny Cullenward, *How California's carbon market actually works*, 70(5) BULLETIN OF THE ATOMIC SCIENTISTS 35-44 (2014) ([link](#)).
- *Citizens Climate Lobby v. CARB*, 2013 WL 861396 (Cal. Sup. Ct. Jan. 25, 2013).

- *California Chamber of Commerce v. CARB*, Sacramento Superior Court, Case No. 34-2012-80001313 (Cal. Sup. Ct. Aug. 28, 2013) & *Morning Star Packing Co., et al. v. CARB*, Sacramento Superior Court, Case No. 34-2013-80001464 (Cal. Sup. Ct. Aug. 28, 2013).
- Pacific Coast Action Plan on Climate and Energy (Oct. 28, 2013) ([link](#)).

(Week 8) The Regional Greenhouse Gas Initiative

- Shelly Welton, Michael Gerrard, and Jason Munster, Regulating Electricity Imports into RGGI: Toward a Legal, Workable Solution, Columbia Law School Center for Climate Change Law White Paper (August 2013) ([link](#)).
- Bruce R. Huber, *How Did RGGI Do It? Political Economy and Emissions Auctions*, 40 ECOLOGY LAW QUARTERLY 59 (2013) ([link](#)).

PART III: Federal Policy

(Week 9) Introduction

- United Nations Framework Convention on Climate Change (1992) ([link](#)).
Read the entire document, but focus on Article 2.
- U.S. Constitution, Art. II § 2 ([link](#)).
- S. Res. 98, 105th Congress (Byrd-Hagel) (1998) ([link](#)).
- Kyoto Protocol to the United Nations Framework Convention on Climate Change (1998) ([link](#)).
Skim the entire document, focusing on the obligations of Annex I countries. Specifically review the commitments under Annex B and note the uniformity of European Community commitments.
- Review the U.S. commitment under the Copenhagen Accord ([link](#)).
- The President's Climate Action Plan (Obama Administration) (June 2013) ([link](#)).

(Weeks 9-10) Electricity Policy

- Sonia Aggarwal and Hal Harvey, *Rethinking Policy to Deliver a Clean Energy Future*, 26 ELECTRICITY JOURNAL 7, 7-22 (2013) ([link](#)).
- *Hunter v. FERC*, 711 F.3d 155 (D.C. Cir. 2013)
- Selected sections from the Federal Power Act (18 U.S.C. §§ 201, 204, 205).
- *Electric Power Supply Association v. FERC*, 753 F.3d 216 (D.C. Cir. 2014).
- Steven Weissman and Romany Webb, Addressing Climate Change Without Legislation, Vol. 2: FERC (July 2014) ([link](#)).

(Week 11) Emissions Pricing: Federal Carbon Markets

- Center for Climate and Energy Solutions (C2ES), Waxman-Markey Short Summary ([link](#)).
- H.R. 2454, The American Clean Energy and Security Act of 2009, 111th Congress (Waxman-Markey) ([link](#)).
Read the table of contents. How long is the bill? What do each of the Titles do?
- Environmental Protection Agency, *EPA Analysis of the American Clean Energy and Security Act of 2009, H.R. 2454 in the 111th Congress* (June 23, 2009) ([link](#)).
Skim entire slide deck, but focus on Slides 11, 15, and 17. How did EPA project regulated entities will meet the cap? How were allowances allocated in the bill? What did EPA expect would happen in the electricity sector to meet the cap?

(Week 12) Emissions Pricing: Carbon Taxes / Fee-and-Dividend

- S. 332, The Climate Protection Act of 2013, 113th Congress (Boxer-Sanders) ([link](#)).
- Danny Cullenward, Jordan T. Wilkerson, Michael Wara, and John P. Weyant, *A Distributional Analysis of the Climate Protection Act of 2013: Impacts on Emissions, the Economy, and Household Expenditures*, under review at ENERGY POLICY (2014).
- George P. Schultz and Gary S. Becker, *Why We Support a Revenue-Neutral Carbon Tax*, THE WALL STREET JOURNAL (Apr. 7, 2013) ([link](#)).
- Henry M. Paulson, Jr., *The Coming Climate Crash*, THE NEW YORK TIMES (June 21, 2014) ([link](#)).

(Weeks 13-15) The Clean Air Act

- Key Clean Air Act provisions: 42 U.S.C. § 7543 ([link](#)).
- AB 1493 (Pavley) ([link](#)).
Review the document briefly, emphasizing Section 3.
- Cal. Code Regulations, Title 13, Division 3, Chapter 1, Article 2, § 1961.1 ([link](#)).
- *Massachusetts v. EPA*, 549 U.S. 497 (2007)
- Environmental Protection Agency, *EPA and NHSTA Finalize Historic National Program to Reduce Greenhouse Gases and Improve Fuel Economy for Cars and Trucks* (April 2010) ([link](#)).
- Key Clean Air Act provisions: 42 U.S.C. § 7475(a) ([link](#)); *id.* § 7479(1) ([link](#)).

- Environmental Protection Agency, Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 Federal Register 31514, 31514-31608 (June 3, 2010) (the “tailoring rule”) ([link](#)).
- *Utility Air Regulatory Group v. EPA*, 134 S.Ct. 2427 (2014).
- Key Clean Air Act Provisions: 42 U.S.C. §§ 7411(a)-(d) ([link](#)).
- Environmental Protection Agency, Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units, 79 FEDERAL REGISTER 1430, 1430-1519 (Jan. 8, 2014) ([link](#)).
- Environmental Protection Agency, Carbon Pollution Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 FEDERAL REGISTER 34830, 34830-34958 (June 18, 2014) ([link](#)).
- Mark Hertsgaard, *Promises, Promises: Can Obama redeem his environmental failures?* HARPER’S MAGAZINE (July 2014).