

## **Climate Change Law and Policy**

MAST 667-016

Spring 2009

**Course home page: Sakai**

**Professor Jeremy Firestone**

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**831-0228**

### **Meeting Times and Places**

Mondays and Wednesdays 9:05-10:30 a.m. in Robinson 105; Cannon 203, unless otherwise noted

**Overview:** Climate Change has emerged as the most important environmental issue and one of the key issues regardless of subject matter national and globally. This course will explore the developments in climate change law and policy. We will begin with climate change science and equity, examining the UNFCCC and the compliance mechanisms established under Kyoto Protocol. We also will examine US initiatives at the federal and state levels and domestic litigation approaches (MASS v. EPA, and nuisance actions) and consider one potential long-term solution to climate change.

**Readings:** The readings for the course are either directly on the Sakai website or will be linked from the website.

### **Evaluation**

***Class Participation/Reading before Class—20%.*** Being a short, intensive course that considers both international and domestic law in a burgeoning area with a focus on policy in addition to law, much of the course will not be structured around the “case” method. While I will lead discussions and present material, the success of this endeavor will depend on your active participation, discussion and insights. I am a firm believer that reading the assigned material before each class benefits you and the community, which is comprised of the members of this class. You will also be required to present one or more of the articles that we will read during the class.

***Presentation of one or more research articles —15%***

***Paper—50%/Presentation of Final Paper-15%.*** The final paper is due on May 27. The paper should be approximately 4000 words exclusive of references. Topics will be approved by the instructor. Presentations will take place near the end of the term.

## Section I: Background

**Feb 11 and 16:** Course Introduction, CC Science, & broad goals to solve the climate problem

- Intergovernmental Panel on Climate Change, Summary for Policymakers (2007)
- Naomi Oreskes, The Scientific Consensus on Climate Change, *Science*, 306: 1686 (2004)
- Pacala & Socolow, "Stabilization Wedges: Solving the Climate Problem for the next 50 Years with Current Technologies," *Science*, 305: 968-972 (August 13, 2004)

**Feb 18:** Public Opinion on and Mental Models of Climate Change

- Kempton, W., Will Environmental Concern Lead to Action on Global Warming?, *Annual Review of Energy Environment*, 18: 217-245 (1993)
- O'Conner, et al., Who Wants to Reduce Greenhouse Gas Emissions, *Social Science Quarterly*, 83(1): 1-17 (2002)
- Kellstedt, et al., Personal Efficacy, the Information Environment, and Attitudes Toward Global Warming and Climate Change in the United States, *Risk Analysis*, 28(1): 113-126 (2008)
- John D. Sterman, Risk Communication on Climate: Mental Models and Mass Balance, *Science*, 322 (5901): 532-33 (24 October 2008)

**Feb 23:** Overview of UNFCCC and the Kyoto Protocol

### Examine

- United Nations Framework Convention on Climate Change
- Kyoto Protocol

### Read

- Ellen Hey, The Climate Change Regime: An Enviro-Economic Problem and International Administrative Law in the Making, *International Environmental Agreements: Politics, Law and Economics*, 1(1): 75-100 (2001)
- Suraje Dessai and Emma Lisa Schipper, The Marrakesh Accords to the Kyoto Protocol: analysis and future prospects, *Global Environmental Change* 13: 149-153 (2003)

## Section II – Climate Change Equity

**Feb 25:** Climate Change Ethics I, Economics, Discounting and Intergenerational Equity

### Read

- Edith Brown Weiss, Edith Brown Weiss, Our Rights and Obligations to Future Generations for the Environment, *American Journal of International Law*, 84 (1): 198-207 (1990)
- Bryan Norton, Intertemporal Ethics, Ch. 11 in *Toward Unity Among Environmentalists*
- Freeman, III, Myrick A., "The Ethical Basis of the Economic View of the Environment"
- Stern Review, Chapter 2: Economics, ethics and climate change
- William Nordhaus, *The Stern Review on the Economics of Climate Change* (2007), **1-19 only**

**Mar 2:** Climate Change Ethics II - CBDR and Historical Contributions

- The Brazilian Proposal, UNFCCC 1997, **read Part III.1-3, pp. 9-15**
- CRS, Greenhouse Gas Emissions: Perspectives on the Top 20 Emitters and Developed Versus Developing Nations (28 Nov. 2008)
- Niklas Höhne, et al., Proposals for Contributions of Emerging Economies to the Climate Regime under the UNFCCC Post 2012, Summary, **pp. 5-20 only**
- Hadjilambrinos C., For Richer or for Poorer? The Role of Science, Politics, and Ethics in the Global, Climate Change Policy Debate, *Bulletin of Science, Technology & Society*, 19(6): 521-531 (1999)

**Mar 4: No Class; Makeup class on Mar 6 (12:30-2:00)**

**Mar 6:** Climate Change Ethics III - Intra-generational Equity and Development Rights

- Benito Müller, Niklas Höhne, Christian Ellermann, Differentiating (Historic) Responsibilities for Climate Change, Summary Report (October 2007), pp. **5-19, only**
- Eco-equity, The Right to Development in a Climate Constrained World, Greenhouse Development Rights Framework, 2<sup>nd</sup> Ed. 2008, Executive Summary
- J. Timmons Roberts, Kara Starr, Thomas Jones, and Dinah Abdel-Fattah, The Reality of Official Climate Aid, Oxford Institute of Energy Studies (November 2008).

### **Mar 9:** Climate Change Ethics IV –The intersection with Human Rights

#### **Examine**

- Inter-American Commission on Human Rights (ICHR)
- Petition to the Inter American Commission On Human Rights Seeking Relief From Violations Resulting From Global Warming Caused by Acts and Omissions of The United States
- ICHR hearing on Human Rights and Global Warming (March 1, 2007),

#### **Read**

- Summary of Inuit Petition
- Svitlana Kravchenko, Right to Carbon or Right to Life: Human Rights Approaches to Climate Change, Vermont Journal of Environmental Law (2008) **read 521-541 only**
- Tim Hayward, Human Rights Versus Emissions Rights: Climate Justice and the Equitable Distribution of Ecological Space, Ethics and International Affairs, 21(4): 431-450 (2008)

### **Section III: Mitigation Mechanisms**

#### **Mar 11:** Carbon Trading versus Carbon Taxes

- Nordhaus, William D., To Tax or Not to Tax: Alternative Approaches to Slowing Global Warming, Review of Environmental Economics and Policy, 1(1): 26-44 (2007)
- N.O. Keohane, Cap and Trade, Rehabilitated: Using Tradable Permits to Control U.S. Greenhouse Gases, Review of Environmental Economics and Policy, 3(1): 42-62 (2009); **read 42-55 only.**

#### **Mar 16:** Carbon Trading – What have we learned - EU ETS

- EGENHOFER, The Making of the EU Emissions Trading Scheme: Status, Prospects and Implications for Business, European Management Journal, 25(6): 453-63 (2007)
- Congressional Research Service, Climate Change: The EU Emissions Trading Scheme (ETS) Gets Ready for Kyoto (November 24, 2008)

#### **March 18:** Carbon Trading – Design Considerations

- Tom Tietenberg, The Tradable Permits Approach to Protecting the Commons: What Have We Learned? (2002) – **Read Design Considerations, pp. 6-13, only**
- Robert N. Stavins, Addressing Climate Change with a Comprehensive US Cap-and Trade System, ENRP-Discussion Paper, 2008-1
- Terry Dinan, Trade-offs in Allocating Allowances for CO<sub>2</sub> Emissions, Economic and Budget Issue Brief, Congressional Budget Office (CBO) (April 25, 2007)

**March 23:** Carbon Trading - RGGI

- Design Elements for Regional Allowance Auctions under the Regional Greenhouse Gas Initiative
- Potential Emissions Leakage and the Regional Greenhouse Gas Initiative (RGGI): Evaluating Market Dynamics, Monitoring Options, and Possible Mitigation Mechanisms, Report, (**read executive summary, ES1-ES12**)
- Post-Settlement Auction Report Shows Robust Market for RGGI Carbon Dioxide Emissions Allowances

**Mar 25** Clean Development Mechanism (CDM)

- CHRISTOPHER CARR AND FLAVIA ROSEMBUJ, Flexible mechanism for climate change compliance: Emission offset purchases under the Clean Development Mechanism, *NYU Environmental Law Journal*, 16(1): 44-62 (2008),
- Michael W. Wara and David G. Victor, A Realistic Policy on International Carbon Offsets (April 2008)
- Lecocq, Frank and Philippe Ambrosi, The Clean Development Mechanism: History, Status, and Prospects, *Review of Environmental Economics & Policy*, 1(1): 134-51 (2007)

**Apr 6** Joint Implementation (JI) and Voluntary Markets

- Anna Korppoo and Olga Gassan-zade, Joint Implementation, Looking Backward and Forward (*Climate Strategies*, 20 Oct. 2008),
- Matthew J. Kotchen, An Economics Perspective on the Market for Voluntary Carbon Offsets, presentation at the Federal Trade Commission (2008),
- Anja Kollmuss (SEI-US), et al, Making Sense of the Voluntary Carbon Market, A Comparison of Carbon Offset Standards, WWF Germany, **pp. 66-70** (March 2008) (Chicago Climate Exchange).
- CRS, Voluntary Carbon Offsets, Overview and Assessment, RL34241 (Nov. 7, 2007).

**Apr 8:** Forestry: LULUCF and REDD

- Bernhard Schlamadinger, et al., A synopsis of land use, land-use change and forestry (LULUCF) under the Kyoto Protocol and Marrakech Accords, *Environmental Science and Policy*, 271-282 (2007)
- Annah L. Peterson, et al., Seeing REDD: Reducing Emissions and Conserving Biodiversity by Avoiding Deforestation, accepted for publication, *J. of Sustainable Forestry*,

## Section IV: Domestic Policy Responses

### Apr 13: State Initiatives and Green Energy Policies

#### Examine

- Fact Sheet on California Scoping Plan

#### Read

- Byrne, J., et al., American policy conflict in the greenhouse: Divergent trends in federal, regional, state, and local green energy and climate change policy, *Energy Policy*, 35: 4555-4573 (2007)
- John Farrell, Minnesota Feed-In Tariff Could Lower Cost, Boost Renewables and Expand Local Ownership (January 2008)
- Goulder, California's Bold New Climate Initiative, *Economist's Voice* 4-6 (2007).
- Michael Hanemann, California's New Greenhouse Gas Laws, *Review of Environmental Economics and Policy*, 2(1): 114-129 (2008)

### Apr 15: Federal Initiatives

#### Examine

- Bush Administration Climate Change Fact Sheet,
- Bush Administration-US Actions to address climate change (fact sheet and brochure),
- Asia-Pacific Partnership on Clean Development and Climate,
- Pew Center for Global Climate Change, Economy-wide Cap-and-Trade Proposals in the 110th Congress

#### Read

- Flatt, V., Taking the Legislative Temperature: Which Federal Climate Change Legislative Proposal is "Best"?, *Northwestern University Law Review Colloquy*, 102: 123-150 (2007),
- Van Vuuren, Detlef, et al., An evaluation of the level of ambition and implications of the Bush Climate Change Initiative, *Climate Policy*, 2: 293-301 (2002)

## Section V: Litigation Approaches in US Courts

### Apr 20: Background on Law (Standing, Political Question Doctrine and Deference)

#### Examine

- Administrative Procedures Act APA 5 USC 706

#### Read

- *Lujan v. Defenders of Wildlife*, 504 US 555 (1992)
- *Chevron v. NRDC*, 467 U.S. 837 (1984)
- *Schneider v. Kissinger*, 412 F.3d 190 (DC Cir. 2005)

**Apr 22 and 27:** Regulation of CO<sub>2</sub> in Motor Vehicles: The Clean Air Act

- MASS v. EPA, 127 S.C. 1438 (2007)
- Central Valley Chrysler Jeep v. Goldstene, 529 F.Supp.2d 1151, 1171-89 (E.D. Cal., Dec. 11, 2007)
- Denial of California Request for a CAA Waiver, 73 Fed. Reg. 12156 (Mar. 6, 2008)
- Center for Biological Diversity v. NHSTA, 508 F.3d 508 (9<sup>th</sup> Cir. 2007)

**Apr 29:** Consideration of Climate Change in the Siting of power plants

- Friends of Chattahoochee, Inc. v. Couch (“Longleaf”), Georgia Superior Court, Fulton County, No. 2008CV146398 (June 30, 2008)
- Public Health--Air Quality Control--Action to Protect Health or Environment; Authority to Deny, Modify or Stay Issuance of an Air Quality Permit, Kansas Attorney General Opinion No. 2007-31 (24 Sept 2007)
- Stephen L. Johnson, Administrator, EPA's Interpretation of Regulations that Determine Pollutants Covered By Federal Prevention of Significant Deterioration (PSD) Permit Program (18 December 2008)

**May 4:** Broader Implications – ESA and NEPA

**Examine**

- Fish and Wildlife Polar Bear Issues and Proposed Rule to List Polar Bears under the Endangered Species Act as a Threatened Species
- Buck, E., Polar Bears: Proposed Listing Under the Endangered Species Act, CRS Report to Congress (2007)
- Polar Bear Rule

**Read**

- Polar Bear Final Rule, 73 Federal Register 76249-76261 (December 16, 2008); **Read issue 15 and response only, pp. 76265-76266**
- Doremus, Holly, Polar Bear Politics
- Petition seeking CEQ amend NEPA Regulations to include Climate Change Analysis (2008), (concentrate on pages 28-35)

**May 6: No Class; class rescheduled for May 8 (12:30-2:00)**

**May 8:** Common Law Claims

**Read**

- Connecticut v. AEP, 406 F.Supp 2nd. 265 (S.D. NY 2005), appeal pending
- California v. General Motors Corporation, 2007 U.S. Dist. LEXIS 68547 (N.D. Cal. 2007), appeal pending

**Other**

- Comer v. Murphy Oil (S.D. Miss 2007) (transcript on motion to dismiss), appeal pending

## **Section VI. Other International Fora and Toward Copenhagen '09**

### **May 11: World Heritage**

#### **Examine**

- World Heritage Convention
- Australia Blue Mountain Petition to the World Heritage Committee

#### **Read**

- Thorson, E., The World Heritage Convention & Climate Change: The Case for Climate-Change Mitigation Strategy Beyond the Kyoto Protocol

### **May 13: Student Presentations**

### **May 18: Student Presentations**

### **May 20: Toward Copenhagen '09**

- Ott, Herman E., Climate Policy Post-2012 – A Roadmap. The Global Governance of Climate Change, A discussion paper for the Tällberg Forum,
- Bali Action Plan

### **May 27: Papers due at noon.**