

GLOBAL CLIMATE CHANGE AND U.S. LAW

Professor Katrina F. Kuh
Course No. 2856(A)
Thurs. 2:10-4pm, Room 205

Contact Information

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Course Overview

This course will explore domestic legal, administrative, and market mechanisms for addressing global climate change in the United States. Topics covered will include proposals for direct federal regulation of greenhouse gas emissions, federal regulation of greenhouse emissions under the Clean Air Act, litigation and other actions to mandate the consideration of climate change impacts under other existing federal statutes (such as NEPA and the ESA), common law tort actions, and independent emissions-reduction measures adopted by localities, states, regions, and market sectors. The course seeks to provide students with an understanding of the domestic legal options available to address greenhouse gas emissions and invites students to develop opinions about their viability, interplay, and desirability.

No pre-requisites or co-requisites are required, but Environmental Law is recommended. A basic understanding of major environmental statutes, such as the Clean Air Act, NEPA, and the ESA will assist students in understanding how climate change issues intersect with those statutes.

Materials

- The required anchor text is Michael B. Gerrard, *Global Climate Change and U.S. Law* (ABA 2007) *and* updates (available at <http://www.abanet.org/abapubs/globalclimate>).
- Additional materials available from a variety of on-line sources will also be assigned. Students are expected to independently download these materials.

Class Attendance and Participation

- I will call on students regularly during class and will consider class preparation and participation when writing student recommendations and with regard to grading, as described below.

- Class participation will comprise 10% of each student's final course grade and will consist of (1) participation in class discussion; (2) a 10-minute in-class presentation on an assigned research topic; and (3) a 10-minute in-class presentation on the student's course paper topic.
- As noted above, once during the semester each student will be asked to research a topic related to the week's reading and describe the results of that research in a 10-minute presentation to the class. Additionally, each student will be asked to provide the class with a 10-minute presentation regarding his or her course paper topic.
- A sign-in sheet will be available for each class. The sign-in sheet will be used to record and track attendance; falsification will be deemed a violation of the Code of Academic Conduct. Any student who misses 20% or more of scheduled classes based on the sign-in sheet records is presumptively not in good and regular attendance and may be required to withdraw from the course or receive a failing grade, upon referral to and determination by the Office of Student Affairs.

Examination and Grading

- Course grades will be based upon a draft and final course paper, with class participation factored in as described above.
- Each student is required to submit a draft of his or her final course paper on or before Tuesday, April 1. The draft will consist of 5% of the student's course grade. To receive full credit, drafts must be timely submitted and evidence significant progress in researching and developing arguments related to the paper topic.
- Each student is required to submit a final course paper on or before Wednesday, April 30. The final course paper will consist of 85% of the student's course grade and must be a minimum of 20 pages in length, reflect significant legal research, and address a topic related to the law of climate change.

Reading Assignments

- Reading assignments for Parts I-II follow below under Course Outline and will be periodically supplemented with reading assignments for additional Parts.
- Assignments will also be announced during class and posted on TWEN (available through www.lawschool.westlaw.com, assistance available at west.twensupport@thomson.com or 1-800-486-4876).

Course Outline

An outline of major topics to be covered during the course follows. Reading page assignments are listed for the first three classes. Thereafter reading assignments will be announced in class and posted on TWEN.

Course Outline

Global Climate Change and U.S. Law

I. Introduction to Climate Change: Overview of Climate Change Science, International Policy and U.S. Policy

Class #1 (January 17): The Science of Climate Change

- Global Climate Change and U.S. Law, Chapter 1 (skim only)
- Intergovernmental Panel on Climate Change Fourth Assessment Report (Climate Change 2007: Synthesis Report): Summary for Policymakers, *available at* http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf
- Intergovernmental Panel on Climate Change Fourth Assessment Report (Climate Change 2007: Synthesis Report): Longer Report, Introduction, *available at* http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_introduction.pdf
- House Committee on Oversight and Government Reform, January 30, 2007 Hearing on Allegations of Political Interference with Science: Global Warming (selectively skim for overview only), *available at* <http://oversight.house.gov/story.asp?ID=1162>
- David S. Caudill, *Images of Expertise: Converging Discourses on the Use and Abuse of Science in Massachusetts v. EPA*, 18 Vill. Envtl. L.J. 185 (2007)

Class #2 (January 24): International Climate Change Policy

- Global Climate Change and U.S. Law, Chapter 2
- Bali Action Plan, *available at* http://unfccc.int/files/meetings/cop_13/application/pdf/cop_bali_action.pdf
- United Nations Framework Convention on Climate Change, *available at* <http://unfccc.int/resource/docs/convkp/conveng.pdf>
- Kyoto Protocol to the United Nations Framework Convention on Climate Change, *available at* <http://unfccc.int/resource/docs/convkp/kpeng.pdf>
- Paul G. Harris, *The European Union and Environmental Change: Sharing the Burdens of Global Warming*, 17 Colo. J. Int'l Envtl. L. & Pol'y 309 (2006)

- Posner, Eric A. and Sunstein, Cass R., “Climate Change Justice” (August 2007). U of Chicago Law & Economics, Olin Working Paper No. 354, *available at* <http://www.law.uchicago.edu/Lawecon/index.html>

Class #3 (January 31): U.S. Climate Change Policy

- Global Climate Change and U.S. Law, Chapter 3
- Fourth United States Climate Action Report to the UN Framework Convention on Climate Change, *available at* <http://www.state.gov/g/oes/rls/rpts/car/>
- Summary of the Energy Independence and Security Act of 2007, *available at* <http://www.vnf.com/assets/attachments/312.pdf>
- Plaintiffs’ Brief in Support of Summary Judgment, *Center for Biological Diversity v. Brennan*, N.D. Calif., No. 06-7062, 8/21/07 (pdf available on TWEN homepage)

II. Direct Federal Regulation of Greenhouse Gas Emissions?

This portion of the course will consider (1) regulation of greenhouse gas emissions under the Clean Air Act and (2) legislative proposals for direct federal regulation of greenhouse gas emissions.

Class #4 (February 7): Regulation of GHGs under the Clean Air Act

- Global Climate Change and U.S. Law, Chapter 5 (make sure to check updates)
- *Massachusetts v. E.P.A.*, 127 S.Ct. 1438 (2007)

Class #5 (February 14): Legislative Proposals for Direct Federal Regulation of GHGs

- America’s Climate Security Act of 2007 (pdf available on TWEN homepage)
- Robert R. Nordhaus & Kyle W. Danish, *Designing a Mandatory Greenhouse Gas Reduction Program for the U.S.* (Pew Center on Global Climate Change May 2003), *available at*: http://www.pewclimate.org/global-warming-in-depth/all_reports/mandatory_ghg_reduction_prgm

III. Other Approaches to Addressing Climate Change through Existing (Environmental) Statutes

This portion of the course will consider ways in which existing (primarily environmental) statutes – besides the Clean Air Act -- have been used or may be used to address concerns related to global climate change. Topics will include an analysis of litigation/petitions brought with respect to environmental impact review, the Endangered Species Act, the Clean Water Act, and SEC disclosure requirements.

Class #6 (February 21): Environmental Impact Review

- Janice M. Schneider and Elidia C. Dostal, *Trends in Analysis of Global Climate Change Under NEPA* (Latham & Watkins Client Alert No. 637, Oct. 15, 2007) (pdf to be made available on the TWEN homepage)
- Council on Environmental Quality, *Draft Guidance Regarding Consideration of Global Climate Change in Environmental Documents Prepared Pursuant to the National Environmental Policy Act* (Oct. 8, 1997), available at <http://www.mms.gov/eppd/compliance/reports/ceqmemo.pdf>
- *Friends of Earth, Inc. v. Watson*, 2005 WL 2035596, No. C 02-4106 JSW (N.D.Cal. Aug. 23, 2005)
- *Friends of Earth, Inc. v. Mosbacher*, 488 F.Supp.2d 889 (N.D.Cal. 2007) (skim)

Class #7 (February 28): Endangered Species Act

- Ruhl, J.B., “Climate Change and the Endangered Species Act: Building Bridges to the No-Analog Future,” Boston University Law Review, November 2007

Class #8 (March 6): SEC Disclosures & Misc

- Global Climate Change and U.S. Law, Chapter 13
- New York State Energy Company Subpoenas, Letters from Attorney General Cuomo, available at http://www.oag.state.ny.us/press/2007/sep/sep17a_07.html

IV. Common Law Litigation and Global Climate Change

This portion of the course will evaluate efforts to use common law tort theories (primarily public nuisance) to impose accountability for climate change-related harms.

Class #9 (March 13): Climate Change Tort Claims

- Complaint in *Kivalina v. ExxonMobil Corp. et al.* (pdf available on TWEN site or Google “Kivalina complaint”) (note, please feel free to skim and read selectively)
- **OPTIONAL background reading:** Global Climate Change and U.S. Law, Chapter 6 pp. 197-98; 200-15

V. Local, State and Regional Responses to Climate Change

This portion of the course will identify and examine local, state and regional approaches to addressing climate change.

Class #10 (March 20): Overview of State and Regional Responses to Climate Change

- Global Climate Change and U.S. Law, Chapter 9 pp. 315-31; Chapter 10 pp. 350-65

Class #11 (April 3): Overview of Local Responses to Climate Change

- Global Climate Change and U.S. Law, Chapter 12

VI. Environmental Federalism and Limitations on Local, State, Regional, Federal Action

This portion of the course will (1) introduce policy arguments about where environmental regulation is best located (local, state, federal level) to achieve desired results and (2) identify limits on choice of regulatory forum (preemption, commerce clause, dormant commerce clause). The focus will be on identifying how constitutional, structural limits may impede local, state and regional actions regarding climate change and also constrain possible federal actions.

Class #12 (April 10): Environmental Federalism and Climate Change

- Adaptive Federalism: The Case Against Reallocating Environmental Regulatory Authority, ____ Minn. L. Rev. ____ (forthcoming 2008) (co-author, with David E. Adelman), available from [UA Link](#) (Ctrl + Click to follow link)

Note: Our final two classes (Class #13, April 17 and Class #14, April 24) will be largely devoted to student paper presentations although we may continue to discuss issues relating to environmental federalism and climate change to the extent that time permits.

****Thank you, I hope that you enjoyed the class!****