

THE LAW OF CLIMATE CHANGE: DOMESTIC & TRANSNATIONAL
Spring 2008
Syllabus

Judge Eleanor Stein
518-265-2395
Estein@albanylaw.edu

COURSE OBJECTIVES:

This course is a general introduction to the body of domestic and transnational law that has developed and is developing daily to grapple with the crisis of catastrophic anthropogenic climate change. The course will begin with a general overview of the science, economics, policy and legal framework of the law of climate change. This ranges from the international environmental agenda of today - an introduction to international environmental law and policy, including treaty law, contemporary diplomacy and the development of new multilateral institutions. We will also explore the growing theories of international human rights to a clean environment, and the attempts to locate and enforce such rights in international and U.S. law.

Turning to domestic law, we will examine the areas of law that govern the principal sources of greenhouse gases: transportation and energy generation, in particular. To look at these areas, we will consider the centrality of the car in our culture and history, and read the core of the historical and recent cases concerning environmental standards for automobiles. In the areas of electricity, oil and natural gas – sources for lighting, heating, and industry – we will review the regulatory paradigm and its shortcomings, and examine current models for solutions to climate change, on the national, regional and local level.

In addition, this course will be conducted on a **no-carbon or low carbon basis**.

We will use electronic distance learning tools for one half the work of this course.

Topics include:

- Climate science
- The economics of fossil-fuel based industry, electricity generation, and transportation: what are the long-term costs
- Ecological Limitations vs. Economic Development. North/South conflicts; the relationship between the rich and the developing nations, and the trade-offs between environmental protection, poverty, economic growth, consumption and population.
- Sources of international public law and the global commons

Required Materials:

Michael Gerrard, Ed., THE LAW OF CLIMATE CHANGE
. (Updates to the text can be found
at <http://www.abanet.org/abapubs/globalclimate>)

Elizabeth Kolbert, FIELDNOTES FROM A CATASTROPHE
Cases, statutes and regulations

Supplemental Materials:

IPCC Fourth Assessment Report: Summary for Policymakers, at
http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf

The theory of stabilization wedges, by Stephen Pacala and Robert Socolow, at

<http://www.princeton.edu/wedges/articles/> and click on “Introduction to the Wedges” and Wedges Primer at <http://www.princeton.edu/~cmi/news/CMIinBrief.pdf>

2006 Scientific American

<http://www.princeton.edu/~cmi/research/Integration/Papers/A%20Plan%20to%20Keep%20Carbon%20in%20Check.pdf>

McKibben, THE END OF NATURE

THE WORK OF THE COURSE:

This course will take place 2/3 in the classroom and 1/3 on line. The class will meet weekly. On-line class “meetings” will be asynchronous. In addition to class discussion that will take place on line, some assignments will be entirely on line.

The work of this course will be carried out in several forms:

- One class meeting per week
- Weekly on-line discussion postings
- Current news reading and discussion
- On-line litigation of a case concerning the siting of a wind farm in central New York
- An open-book final exam or final paper

Your final grade will be based upon the following factors:

Class participation – 20%

On-line litigation assignments and discussion - 50%

Final paper or exam – 30%

Weekly I will post a discussion and question piece, based upon the cases and other readings assigned for the week OR you will be notified of an event in the wind farm litigation matter that requires a response. You will be responsible for one or more postings every week beginning with the second week of class and ending one week before the end of the semester.

Week One:

Introduction to the course

Reading: Kolbert, FIELD NOTES FROM A CATASTROPHE

Week Two:

Overview of climate law issues

Reading:

Socolow and Pacala, *The Theory of Stabilization Wedges*
Gerrard, Ed., THE LAW OF CLIMATE CHANGE, pp. 1-27 (Introduction and overview)

Massachusetts v. EPA, ___ U.S. ___, 127 S.Ct. 1438 (NO. 05-1120) (April 2, 2007) and subsequent EPA decisions on the California waiver applications

Week Three:

Reading: Gerrard, Chapter 3: U.S. Policy

How to look at energy and climate

Broad overview of energy in the US economy, and energy systems, the role of fossil fuels, introduction to the grid, federal policy on oil, natural gas, electricity

Introduction to state/federal regulation, role of utilities, natural monopolies v. competition, regulatory compact

Week Four:

Reading: Gerrard, Chapters 7 and 10

Fossil fueled-facilities siting and greenhouse gas emissions concerns;

Changing national policy: EPACT 2007 and current proposals for new federal legislation: compare the regional and state models, including California Law AB 32, and regulatory initiatives, including New York: renewable energy ; introduction to renewables, energy efficiency, CCS, RGGI.

Week Five:

Reading: *Cape Wind* cases

Discussion of siting of renewable energy facilities and the role of community acceptance and rejection

Law Office Meetings

Week Six:

Gerrard, Chapter 18: Carbon Emission Reductions as a tradeable commodity
The Albany Climate Exchange

Week Seven

Reading: Gerrard, Chapter 5

Romance of the Automobile: the national highway system, energy and national security; federal preemption; Vermont and California Clean Air cases, EPA decision on CAFÉ standards; Issues of jurisdiction and preemption: Mass. V. EPA; Lingle v. Chevron, Engine Manufacturers Assn v. South Coast Air Quality Management District

Week Eight

Reading: Gerrard, Chapter 6

Litigation strategies on climate change: *State of Connecticut v. American Electric Power*;

Center for Biological Diversity cases and the endangered species paradigm

Law Office Meetings

Week Nine:

Reading: Gerrard, Chapter International Law of Climate—UN Framework Convention on Climate Change and Kyoto Protocol

Week Ten:

More international law – the roadmap from Bali

Week Eleven:

Commodity trading in international climate law

Week Twelve:

Reading: Gerrard, Chapter 6, pp.221-224

Climate Change and Human Rights: the Inuit Petition

Week Thirteen:

Reading: Gerrard Chapter 6, pp. 224-236

More on Climate, environment and human rights: Oil and Human rights – *Sosa v. Alvarez-Machain*

Human rights and climate change: The Inuit petition

