

# THE LAW OF CLIMATE CHANGE: DOMESTIC & TRANSNATIONAL

*Judge Eleanor Stein*

SUNY Albany  
Monday & Wednesday 7:15 – 8:35 pm  
RPOS 399 Selected Topics  
Education Building Room 120

[estein@albanylaw.edu](mailto:estein@albanylaw.edu) or [estein2@albany.edu](mailto:estein2@albany.edu)  
518-265-2395

**Office hours by appointment**

## Syllabus Fall 2015

### **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 (human-caused) climate change. Our understanding of the impact of climate change on our world is expanding dramatically, and the law of climate change is changing fast as well. We will monitor ongoing developments in international negotiations, court decisions, congressional action, EPA decisions, and state programs. The course is divided into an introduction to climate science + four modules: international law, federal law, regional, state and local law, and human rights.

The course will begin with a general overview of the science, policy and law of climate change. During the first week of class we will be discussing the first two chapters of Bill McKibben's book, *EAARTH*. On September 9, we will be very fortunate to have a guest lecturer, practicing climatologist Professor Matthias Vuille, of the State University of New York at Albany's Department of Atmospheric and Environmental Studies, to explain current scientific thinking on climate and answer all our questions about the science.

The modules begin with international law. We will introduce international environmental law, including the history of climate treaty law, up through a negotiation exercise focused on the follow-up to the 2014 Lima Conference. The Kyoto Protocol expired at the end of 2012; the most recent global conference on climate change was held in Lima, Peru, in December 2014, with the urgent task of putting a successor agreement in place. We will hold negotiations of our own in preparation for the next international round. That round – of critical importance – will be held in Paris in December. As the delegates to the Paris summit engage in pre-meetings and file their positions, we will be doing the same in class. You will be assigned to a team to represent a country or a group of countries.

Turning to U.S. law, we begin with federal law. We will examine roles of the legislative, executive, and judicial branch, and the areas of law that govern two principal sources of greenhouse gases: transportation and the generation and use of energy. To look at these areas, we will read the two principal Supreme Court decisions on climate change, as well as other recent court decisions and the decisions of the federal Environmental Protection Agency concerning environmental standards for automobiles and power plants. We will also touch on the failure of congressional legislative action in 2009-2010.

We will then turn our attention to the actions regions and states have taken to reduce fossil fuel use, examining and comparing the California and New York models. We will explore New York City's approach to adaptation to the catastrophic effects of climate change, focused on the 2012 Superstorm Sandy and its aftermath.

Finally, we will explore the application of human rights law to climate change, as well as the concept of climate justice, in the context of the human costs of fossil fuel, the international human right to a clean environment, the right of nations to survive as land masses and cultures, and the various attempts to locate and enforce those rights in international and U.S. law.

#### **THE WORK OF THE COURSE:**

The course will be posted on Blackboard, and assignments will generally be given and handed in electronically. This will include some discussion postings and additional case and other readings to be distributed or assigned during the course. We will take advantage of the availability of experts in the field to come to class and share their experience with us. Most of the course readings are in your materials packet now available at the bookstore. In addition, there will be several classes this semester provided entirely on-line, on October 26-28, and November 11.

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

- Class meetings
- Negotiation of post-Lima steps toward a new global climate agreement
- Case briefs
- A final examination or project. Students may choose either to do a final paper or final presentation, instead of the final examination. To choose the final paper or presentation option, students must select a topic and obtain my approval. The final examination is an open-book take home. One option for a final paper will be research for a rural non-governmental organization combating the effects of climate change in El Salvador.

Your final grade will be based upon the following factors:

Class participation – 10%

Negotiation, state case memo, other assignments – 30%

Final paper/presentation/examination – 60%

**Required Materials:**

McKibben, EAARTH : MAKING A LIFE ON A TOUGH NEW PLANET (St. Martins, Griffin 2010)

Materials packet – available at the SUNYA bookstore

**Supplemental Materials:**

Web links and recent materials to be provided.

News articles and blogs, on a weekly basis, such as the United Nations Framework Convention on Climate Change web sites at <http://newsroom.unfccc.int/>; and Columbia Law School Sabin Center on Climate Change law, at

<http://www.law.columbia.edu/centers/climatechange>.

**INTRODUCTION TO THE COURSE AND TO CLIMATE CHANGE SCIENCE**

**August 26**

**Reading:** McKibben, EAARTH, chapters 1 and 2

Introduction to the course

Superstorm Sandy: where did it leave us?

Overview of climate science, policy and law issues; introduction to mitigation and adaptation.

Discussion of the course and syllabus

**MODULE I:**

**INTERNATIONAL LAW OF CLIMATE CHANGE:**

**August 31 - September 2**

**Reading:** Treaties: UN Framework Convention on Climate Change and Kyoto Protocol.

Introduction to international climate change law

**September 7 – No Class – Labor Day**

**September 9** – Professor Mathias Vuille on current climate science

**Reading:** IPCC Fifth Assessment Report, Summary for Policymakers (excerpts) and McKibben, *Global Warming's Terrifying New Math*, in Rolling Stone magazine, at

<http://www.rollingstone.com/politics/news/global-warmings-terrifying-new-math-20120719> (in Materials Packet)

**September 14 – No Class – Rosh Hashanah**

**September 16-21**

**Reading:** UN documents: the Copenhagen Accord, the Durban Platform, and the Lima decisions (Materials packet)

Continuing discussion of the international climate treaties and agreements, based on INDCs filed in anticipation of Paris ([http://unfccc.int/focus/indc\\_portal/items/8766.php](http://unfccc.int/focus/indc_portal/items/8766.php) and World Resources Institute, <http://www.wri.org/our-work/topics/indcs>)

Distribution of assignments and materials for climate negotiations exercise

**September 23 – No Class – Yom Kippur**

**September 28**

**Reading:** in-class preparation for negotiations as a group and individually

**September 30: NEGOTIATIONS**

Treaty Negotiation session.

Hand in negotiation preparation outline, notes, bibliography.

**October 5** – Reflection on the climate treaty process and the likelihood of success in Paris

**Reading:**

United Nations Ozone Secretariat, *A Success in the Making: The Montreal Protocol on Substances That Deplete the Ozone Layer* (2007) (Materials Packet)

**MODULE II: U.S. FEDERAL LAW OF CLIMATE CHANGE**

**A. The Clean Air Act litigation and subsequent regulation**

**October 5-12– Clean Air Act and Massachusetts v. EPA**

Overview of federal climate law issues – US greenhouse gas emissions and Clean Air Act regulation

**Reading:** *Massachusetts v. EPA* (2007)(Materials Packet)

EPA Denial of Petition for Reconsideration of the Endangerment Finding (excerpts, Materials Packet)

**Case brief to be assigned**

U.S. Clean Power Plan (excerpts, to be distributed)

**B. The Public Nuisance litigation**

**October 14-19**

**Reading:** *American Electric Power v. Connecticut* (Materials Packet)

*Native Village of Kivalina v. Exxon Mobil Corporation* (Materials Packet)

**October 21**

**Congressional action and federal regulation**

**Reading:** Ryan Lizza, *As the World Burns: How the Senate and the White House missed their best chance to deal with climate change*, at

[http://www.newyorker.com/reporting/2010/10/11/101011fa\\_fact\\_lizza](http://www.newyorker.com/reporting/2010/10/11/101011fa_fact_lizza)

President Obama's Climate Action Plan (June 2013) at

<http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf>

**Final paper/presentation topic proposals due for approval**

### **MODULE III: REGIONAL, STATE AND CITY INITIATIVES**

#### **A. Regional Programs October 26 – 28 [Class will be on-line only this week]**

**Reading:** Regional Greenhouse Gas Initiative, Memorandum of Understanding (in Materials Packet)

*Thrun v. Cuomo* (NYS Supreme Court, Appellate Division, 3d Dept December 2013)(in Materials Packet)

The Carbon Trading Game (to be distributed)

#### **B. State Regulation: Mitigation November 2-4**

**Reading:** Socolow, *The Critical Role of Energy Efficiency in Mitigating Global Warming*, 10 Government, Law and Policy Journal 1 (2008) (excerpts in Materials Packet)

Assembly Bill No. 32, California Global Warming Solutions Act of 2006

NYS Department of Environmental Conservation, Part 241 Regulations

*Wallach v. Town of Dryden* 16 N.E.3d 1188 (N.Y. 2014)(to be distributed)

#### **State Regulation: Adaptation November 9 [class meets on-line only]**

**Reading:**

*A Stronger, More Resilient, New York* (June 2013)(excerpts in Materials Packet)

*Climaid* Report (December 2011)(excerpts in Materials Packet)

**November 11 – no class – Veterans Day**

### **MODULE IV:**

#### **CLIMATE CHANGE, HUMAN RIGHTS AND CLIMATE JUSTICE**

**November 16, 18, 23, 30, December 2**

**No class November 25 – Thanksgiving break**

#### **International Human Rights**

**Readings:** Sheila Watt-Cloutier, 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, Summary (Materials Packet)

Stein, *An International Human Rights Violation?* (Materials Packet)

The Cochabamba Principles (Materials Packet)

The Oslo Principles (Materials Packet)

*Urgenda v. Netherlands* (excerpts in Materials Packet)  
*Foster v. Washington Department of Ecology* (Materials Packet)

**Climate Justice and Domestic Law**

**Reading:** New York State Department of Environmental Conservation Regulations  
Implementing Public Service Law Article 10 (Materials Packet)

**December 7-9**

**Last classes:** Summary of climate change law

**Presentations**

**Final papers to be posted by December 9 at 11:00 p.m.**

**Final examination posted December 10 at 9:00 A.M. to be submitted by December 15  
at 11:00 P.M.**