**Climate Change: Law, Policy, and Business**

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**Wednesdays, 4:40-6:50 PM**

**Office Hours: Tuesday 3-4, Thursday 10-11**

**WELCOME!** Nearly all climate scientists believe that human activities are warming the planet[[1]](#footnote-2), and many warn that climate change will devastate human communities here and abroad, and cripple the ecological systems upon which human life depends. Some market analysts predict that trading in carbon will be the planet’s leading industry by 2020, worth more than $US2 trillion annually. How do these two phenomena coexist? How does domestic and international law and policy encourage a market-based approach to solving a pressing environmental problem? We will examine local, state, national, and international laws, policies, litigation and scholarship to address climate change’s impacts, with a focus on cap-and-trade, carbon offsetting, and other private sector responses to the climate change crisis. We will pay particular attention to what private market actors are (or will be) required to do, and what they should be required to do, to help mitigate the damaging effects of global climate change.

**REQUIREMENTS MET BY THIS COURSE:** This seminar fulfills a) Hastings’ writing requirement; and b) elective credits for the Public Interest and International Law concentrations.

**COURSE OUTCOMES:** As a result of taking this seminar, you should be able to:

* Explain how businesses have (not) contributed/are (not) contributing to causing global climate change.
* Explain how businesses are (not) contributing to mitigating global climate change.
* Analyze how various laws and policies that address global climate change constrain or facilitate how businesses may operate.
* Name how global climate change laws and policies encourage (or not) opportunities for entrepreneurship.
* Discuss whether and how laws and policies *should* constrain or facilitate how businesses may operate.

**TEACHING PHILOSOPHY:** I’m teaching at Hastings because a) our communities and our planet need a corps of rigorous, dedicated, skilled lawyers; b) all students should graduate from any educational experience further on the pathway to being ethical, involved participants in the civic and political lives of their chosen communities. This means in this course we will consider:

* *Facts*: What *are* the potential impacts of global climate change? What *does* the law say that businesses must do?
* *Values*: What do various stakeholders in the climate change debate care about? What do you care about?
* *Norms*: How do facts and values combine to determine what we *should* do about climate change as citizens, businesses, communities, nations? How *should* laws and policies reflect these norms?

Any classroom should be a community of engaged teachers and learners. At the heart of the course will be the two hours/week you spend in the class with the other participants. When you are in class, you have responsibilities as a teacher: your classmates and I will learn from you. Please come to class each day, on time, prepared, and ready to participate fully.

You can expect me to plan the best course I can. That means I will select intriguing, pertinent material for you to read, contemplate, and write about, and that I will do my best to keep our time in class challenging, productive, interesting, and even fun. I will provide prompt, engaged feedback to your work, and I will attempt to assess your work fairly. If you feel that I have assessed you unfairly, or if you want to discuss any other aspect of the course or subject matter, you should always come and speak with me. You should expect a good listener. You should expect someone who wants your feedback, and who will respect what you have to say. Above all, you should expect to be in the classroom with someone who loves to teach because I love to learn from you; I will always try to treat you accordingly.

**TEXTS:** No assigned text for the course. Everything is available on the web.

However, if this subject matter is a focus of your education, and/or if you want supplementary material to help you understand global climate change better, here are some good sources:

🡺 Michael B. Gerrard, ed., Global Climate Change and U.S. Law (2007): *This is on course reserve at the library.*

🡺 Tom Mounteer, Climate Change Deskbook, Environmental Law Institute Press (2009).

🡺 Richard G. Hildreth, David R. Hodas, Nicholas A. Robinson, & James Gustave Speth, Climate Change Law: Mitigation and Adaptation, West (2009)

In addition, numerous newspapers and blogs cover climate change regularly: In fact, law and policy of climate change evolves so rapidly, it can overwhelm you if you try to keep up. Some sources that do a fine (and opinionated) job of covering climate change and business:

Climate Progess: <http://www.ft.com/indepth/climatechange>

*Financial Times*: <http://www.ft.com/indepth/climatechange>

Warming Law: <http://theusconstitution.org/blog.warming/>

*Wall St. Journal*: <http://online.wsj.com/article/SB10001424052748704007804574574101605007432.html?mod=WSJ_Opinion_LEFTTopOpinion>

*New York Times’ Dot Earth*: <http://dotearth.blogs.nytimes.com/>

**REQUIREMENTS/GRADING:** This is a seminar, and most of your grade comes from your term paper. I am going to ask you to produce one Annotated Bibliography and one partial draft of that term paper, because you’re likely to do get more out of the seminar, and produce better work, if you get extra feedback from me en route to your final product.

All assignments (Reading Responses, Proposal & Annotated Bibliography, Partial Draft) are due to me electronically ([takacsd@uchastings.edu](mailto:takacsd@uchastings.edu)) by 4:30 PM (i.e. right before class) on the days they are due.

You may write your term paper on whatever interests you, as long as it has something to do with law, business, and climate change. It should be somewhere in the 5000-6000 word range, but I’d welcome shorter or longer papers if appropriate. (What’s “appropriate?” Talk to me about it!) I will be looking for papers that:

* Are analytically rigorous;
* Present interesting, in-depth, original synthesis. That is to say, you’re not merely rehashing what others have written, but are presenting new ideas and arguments;
* Present a balanced discussion of your topic (even if you choose to advocate for a particular position);
* Consider a range of sources (e.g. legal briefs, court decisions, law review articles, other scholarly articles, popular press articles, business or advocacy group position papers, websites), depending on what is appropriate for your topic;
* Are written in a style appropriate for whatever audience you choose;
* Don’t make the reader guess what you are thinking, but, rather, are clear, concise, easy-to-follow, even a pleasure to read;
* Scrupulously document all claims you make in whatever citation style is apt for your chosen audience.

I’d welcome papers that do any of the following:

* Allow you to explore an idea, legal doctrine, policy solution that intrigues you;
* Help you explore a future career choice;
* Shed light on a law review note or a real-world case on which you might be working;
* Are designed to submit to another law journal or other publication. Many students don’t realize that their publication opportunities are not limited to Hastings law journals! (I’d be happy to continue working with you on this after the semester ends.)
* Are prepared for, and delivered to, a real world client, i.e. you produce a well-researched memo that responds to that client’s needs: Please chat with me if that idea intrigues you.

When you finish this paper, you will be an expert on a given topic. Interesting articles on climate change policy and law should find an eager audience. Please consider submitting an op-ed piece to a newspaper, or to a legal journal (e.g. <http://www.law.com/jsp/ca/viewpoint.jsp> or <http://www.dailyjournal.com/>). Furthermore, publishing such a piece would look excellent on your resume, and prospective employers are more likely to read something pithy and punchy than they are to read a journal note or term paper. Writing such an op-ed would likely occur after Fall semester has ended (i.e. you’ll first want to submit your term paper and get feedback), and I am happy to assist you with converting your paper into an op-ed in the Spring.

I am also going to ask that you produce 7 “Reading Responses” that you submit to me to prepare for class. That is to say, I believe I’m assigning less reading than you’ll find in similar courses, but I ask that you spend a bit more time processing and analyzing what we do read. A given Reading Response will be 1-2 pages. It need not be “formal” like a legal memo, but should be thoughtful and well-written. I provide a number of questions for each Reading Response: Feel free to ignore these if you have something really urgent you want to write about (but please always include a paragraph summary of the piece(s) you read).

A note about **plagiarism**: If language in your written words is not in quotation marks with a correct citation, I assume these words are either a) your original idea, or b) something you are summarizing from a source other than your own head. If b, always provide a citation that shows whose idea you are borrowing.

I ask that you visit with me at least once in my office, preferably sooner in the semester rather than later. This way we can get to know each other better, and I can help you choose or focus your term paper topic so you can get the most out of the hours you’ll invest.

Finally, your attendance, preparation, and enthusiastic and informed participation in class are essential parts of your final grade.

How this breaks down:

Paper Proposal and Annotated Bibliography (due 15 September): 10%

Partial Draft of term paper (due 10 November): 15%

Final Draft of term paper (date TBA): 40%

7 Reading Responses: 15%

Class Attendance, Preparation, and Participation: 15%

Final Presentation: 5%

**SYLLABUS:** Likely to change somewhat depending on your interests, new developments, or interesting opportunities…

**Week 1: 25 August: Background – What’s the Problem With Global Climate Change?**

**READ:**

**🡺**Intergovernmental Panel on Climate Change, “Climate Change 2007: Synthesis Report Summary for Policymakers,” <http://www.ipcc.ch/publications_and_data/ar4/syr/en/spm.html>

Unless you’re a climate change groupie, do yourself a favor and make sure you look at the Summary, and not the whole Report! Furthermore, you need not read every word of the Summary, but don’t skimp on the “Adaptation and Mitigation Options.” Focus on who or what will bear the costs of global climate change.

🡺John Llewellyn, “The Business of Climate Change: Challenges and Opportunities,” Lehman Brothers, 2007, **READ “Science: Evidence, mechanisms, and scenarios of climate change” & “Business: Challenges and opportunities for sectors and firms,”**

<http://www.lehman.com/press/pdf_2007/TheBusinessOfClimateChange.pdf>

🡺John Llewellyn & Camille Chaix, “The Business of Climate Change II,” Lehman Brothers, 2007, **Read “Foreword,” “Motivation: Why Climate Change Matters to Business,” [[NOTE: CUT AND PASTE THIS INTO YOUR BROWSER]]**

[**http://europeandcis.undp.org/uploads/public/File/Climate\_change\_training/TheBusinessOfClimateChangeII.pdf**](http://europeandcis.undp.org/uploads/public/File/Climate_change_training/TheBusinessOfClimateChangeII.pdf)

🡺 TOTALLY OPTIONAL, but essential for those with a finely honed sense of irony: [**http://www.smh.com.au/environment/climate-change/coal-group-coy-about-port-exposure-to-rising-seas-20090614-c7g3.html**](http://www.smh.com.au/environment/climate-change/coal-group-coy-about-port-exposure-to-rising-seas-20090614-c7g3.html)

**FOR CLASS: No Reading Response due.** Temporarily overlooking the fate of Lehman Brothers (and of the IPCC, for that matter), please come to class able to:

🡺 *Very briefly* explain who/what is causing global climate change;

🡺 Explain who or what is likely to bear the costs of global climate change;

🡺 Choose an industry that interests you, and discuss the implications of global climate change for that industry. (Both the Lehman Brothers reports provide overviews for different industries.)

**Week 2: 1 September: Search for Solutions – Stability Wedges**

**READ:**

**🡺**Thomas L. Friedman, “The Power of Green,” *New York Times* April 15, 2007, <http://www.nytimes.com/2007/04/15/magazine/15green.t.html>.

🡺S. Pacala & R. Socolow, “Stabilization Wedges: Solving the Climate Problem for the Next 50 Years with Current Technologies,” 305 *Science* 968 (2004), <http://carbonsequestration.us/Papers-presentations/htm/Pacala-Socolow-ScienceMag-Aug2004.pdf>.

🡺**OPTIONAL:** Carbon Mitigation Initiative, “Stability Wedges: A Concept & Game,” pp.1-8 (Don’t worry about the “game” part – this is just a simplified version of Pacala and Socolow’s wedges.)

<http://cmi.princeton.edu/wedges/pdfs/teachers_guide.pdf>

🡺**TOTALLY OPTIONAL FOR THE “I CAN’T GET ENOUGH OF THIS” CROWD:** Find another set of solutions in Michael P. Vandenberg & Anne C. Steinemann, “The Carbon-Neutral Individual, 82 *NYU Law Review* 1673 (2007).

**READING RESPONSE:**

First, in 1-2 sentences for each, please summarize Friedman’s thesis and Pacala & Socolow’s thesis.

Next, choose one of Pacala & Socolow’s stabilization wedges that intrigues you. Please do a bit of research:

* What (if anything) has the U.S. (or, if you’d like, the rest of the world) done to achieve this goal through law and policy?
* Who or what would present obstacles for achieving this goal in law and policy? Please comment on what business interests might present obstacles to realizing this goal in law and policy.
* Who or what would benefit if we implemented this wedge in law and policy? Please comment on what business interests might gain opportunities if we implemented this goal in law and policy.
* Please offer your own normative commentary: *Should* the U.S. make achieving this wedge a focus of law and policy? Why or why not?

**Week 3: 8 September: Business Opportunities and Liabilities – An Overview**

This week, we’ll sample a smörgåsbord of topics designed to give you a very broad overview of how climate change, and laws and policies to address climate change, impact business (for better or worse). If any of these topics particularly interest you, a) we can rearrange the syllabus later on in the semester to cover a topic in more depth, and/or b) you can delve into the topic in greater detail when writing your term paper.

**Don’t panic at the list below!** In class on 1 September, we’ll assign each topic so that you’ll be responsible for ***only* *one*** of the readings on the list below!

**READING RESPONSE:**

* Please present a *very brief* summary of your topic.
* How does this constrain or facilitate the way businesses may operate?
* What is the current state of law with respect to your topic?
* What struck you as most interesting here?

**READ:** Please read **ONE ITEM** from the list below (we’ll choose your item in class). You may want to do a bit of additional research to place the item in context so that you can construct your thought piece and then **present a two-minute overview** of your topic to the class.

1.Jonathan Lash & Fred Wellington, “Competitive Advantage on a Warming Planet, *Harvard Business Review*, March 2007, <http://www.solutionsforglobalwarming.org/docs/HarvardBusReviewonclimatechange-3-07.pdf>

How do businesses turn climate change risks into competitive advantages?

2.Joe Romm, “Bright Source to Build Largest Concentrating Solar Power Plant,” <http://climateprogress.org/2010/08/08/brightsource-to-build-largest-concentrating-solar-power-plant/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+climateprogress%2FlCrX+%28Climate+Progress%29>

and

“Bright Source CEO John Woolard: We understand what it takes to build major CSP projects like Ivanpah,” <http://climateprogress.org/2010/08/08/brightsource-ceo-john-woolard-ivanpah-concentrated-solar-thermal-power-csp/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+climateprogress%2FlCrX+%28Climate+Progress%29>

and

Todd Woody, “For Parched Farmers, a Crop of Electrons,” *New York Times* Aug. 11 2010,

<http://green.blogs.nytimes.com/2010/08/11/for-parched-farmers-a-crop-of-electrons/>

What’s the economic, legal and environmental promise and peril of building these giant solar arrays?

3.Norimitsu Inishi, “Trying to Stop Cattle Burps From Heating Up the Planet,” *New York Times*, July 13 2010, <http://www.nytimes.com/2010/07/14/science/earth/14australia.html>.

What’s at stake (steak?) for the meat *industry* with global climate change?

4.Jake Caldwell, “Real Money for Farmers,” Center for American Progress, April 23 2010, <http://www.americanprogress.org/issues/2010/04/farmer_money.html>

What is at stake for the U.S. agricultural industry with global climate change?

5.Nicole Allan, “Illuminating the Renewable Energy Standard” *The Atlantic*, July 15 2010, <http://www.theatlantic.com/business/archive/2010/07/illuminating-the-renewable-electricity-standard/59813/>

What is a Renewable Energy Standard and why does it matter to business or to climate change?

6.Julian Wong (in Joe Romm’s Climate Progress blog), “The Challenge of China’s Green Technology Policy,” [http://climateprogress.org/2010/07/15/the-challenge-of-china’s-green-technology-policy/](http://climateprogress.org/2010/07/15/the-challenge-of-china's-green-technology-policy/) and Keith Bradsher, “In Crackdown on Energy Use, China to Shut 2,000 Factories,” *New York Times*, Aug. 9 2010, <http://www.nytimes.com/2010/08/10/business/energy-environment/10yuan.html?emc=eta1>

China is now the leading energy user and carbon polluter on the planet. What are the challenges and opportunities for Chinese (or U.S.) businesses here?

7. International Emissions Trading Association, <http://www.ieta.org/ieta/www/pages/index.php>. Who are these people? What do they do? (Note we will be covering “cap and trade” and “carbon offsetting” in later classes: Just give us an overview here.)

8.Chicago Climate Exchange, <http://www.chicagoclimatex.com/>. Who are these people? What do they do? What force of law do they carry? (Note we will be covering “cap and trade” and “carbon offsetting” in later classes: Just give us an overview here.)

9.U.S. House of Representatives Committee on Energy and Commerce, Climate Change Legislation Design White Paper, “Competitiveness Concerns/Engaging Developing Countries,” Jan. 31 2008, <http://energycommerce.house.gov/images/stories/Documents/PDF/selected_legislation/White_Paper.Competitiveness.013108.pdf>

What competitiveness concerns? What does the WTO have to do with anything?

10.Bryce Covert, “ND20 Interview: Van Jones Calls on Patriots to Build a Green Economy,” *new deal 2.0*, July 14 2010, <http://www.newdeal20.org/2010/07/14/nd20-interview-van-jones-calls-on-patriots-to-build-a-green-economy-15000/>

Who is Van Jones? How does he view the connection between climate change and economic opportunities?

11.Anonymous, “U.S. funds efforts to turn CO2 emissions into products,” *USA Today,* July 22 2010, <http://content.usatoday.com/communities/greenhouse/post/2010/07/doe-funds-co2-efforts-/1> What is “Industrial Ecology” and why aren’t we doing more of it?

12.Climate Advisors, <http://www.climateadvisers.com/> and carbonpositive, <http://www.carbonpositive.net/default.aspx>

Who are these people? What do they do? Are they the only ones out there doing this sort of thing?

13.The Carbon Principles, <http://carbonprinciples.org/> and <http://www.carbonprinciples.org/documents/Carbon%20Principles.pdf>. What are these? To whom do they pertain? What force of law do they carry?

14.Christina Ross, Evan Mills, & Sean B. Hecht, “Limiting Liability in the Greenhouse: Insurance Risk-Management in the Context of Global Climate Change,” Stanford Environmental Law Journal Symposium on Climate Change Risk (2007), <http://eetd.lbl.gov/EMills/PUBS/PDF/Liability-in-the-Greenhouse.pdf>.

Why does the insurance industry care about climate change?

15.Julie Makinen, “Insurance Companies Find There is Money to Be Made in Green Technology,” *New York Times*, Aug. 8 2010, <http://www.nytimes.com/2010/08/09/business/energy-environment/09iht-green09.html?emc=eta1>

Where’s the money and how are insurance companies profiting?

16.Chris Lynch, “Put a Price on Carbon to Help Small Business,” *Bloomburg Business Week*, Aug. 3 2010, <http://www.businessweek.com/smallbiz/content/aug2010/sb2010083_990246.htm>. Why would putting a price on carbon *help* small business? Does everyone believe this?

17.Securities & Exchange Commission, Press Release, “SEC Issues Interpretive Guidance on Disclosure Related to Business or Legal Developments Regarding Climate Change,” Jan. 27 2010, <http://www.sec.gov/news/press/2010/2010-15.htm>

and

SEC, “Commission Guidance Regarding Disclosure Related to Climate Risk; Final Rule,” 17CFR Parts 211, 231, & 241, Feb. 8 2010, <http://www.sec.gov/rules/interp/2010/33-9106fr.pdf>

You do not have to master the details of this Rule! But please report on what purposes this Rule serves, and what impacts (if any) it has on businesses.

18.CERES, “Investors File a Record 95 Climate Change Resolutions: a 40% Increase Over 2009 Proxy Season,” <http://www.ceres.org/Page.aspx?pid=1221>

What’s a shareholder resolution? What legal or economic impact do they have?

19.Environmental Law Institute, “Estimating U.S. Government Subsidies to Energy Sources: 2002-2008,” September 2009, <http://www.elistore.org/Data/products/d19_07.pdf>

How does ELI intend that this report be used? What are the implications for the energy industry?

20.Duke Energy, <http://www.duke-energy.com/about-us/viewpoints-climate.asp>

Sample around this website: Why does Duke Energy CEO Jim Rogers *want* the government to regulate his company?

21.Jonathan Hiskes, “House Democrats introduce bill to defend PACE clean-energy program,” Grist, July 15 2010, <http://www.grist.org/article/2010-07-15-democrats-introduce-pace-bill-to-defend-clean-energy-program>

Who are our friends Fannie and Freddie, what’s PACE, and why is this an issue?

22.World Resources Institute, “Carbon Capture and Sequestration,” <http://www.wri.org/project/carbon-capture-sequestration>, and <http://www.wri.org/project/carbon-capture-sequestration/ccs-basics>, and <http://www.youtube.com/watch?v=BdLFUNrinG8>

What’s CCS and why does it matter?

23.American Energy Innovation Council, “A Business Plan for America’s Energy Future,” *Executive Summary* only, <http://www.americanenergyinnovation.org/full-report>

and John M. Broder, “A Call to Triple Spending on Energy Research” *New York Times*, June 9 2010, <http://www.nytimes.com/2010/06/10/business/energy-environment/10gates.html>

Who are these people and what do they want?

24.Elisabeth Rosenthal, “Portugal Gives Itself a Clean-Energy Makeover,” *New York Times*, Aug. 9 2010, <http://www.nytimes.com/2010/08/10/science/earth/10portugal.html?emc=eta1>.

Is what Portugal is doing feasible in the U.S.? Desirable in the U.S.?

25.Pew Center on Global Climate Change, “Tax Policies to Reduce Greenhouse Gas Emissions,” 2008, <http://www.pewclimate.org/docUploads/Taxes.pdf>

We’ll be focusing on cap-and-trade later in the course, so focus here on Pew’s proposals for a direct carbon tax: Feasible? Desirable?

26.Melissa Powers, “The Cost of Coal: Climate Change and the End of Coal as a Source of Cheap Electricity,” *12 U.Pa. Bus. L. 407* (2010). What does the future of the coal industry look like?

**Week 4: 15 September: The UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol**

**READ: No reading assignment.**

**DUE: Paper Proposal/Annotated Bibliography**

**WRITING ASSIGNMENT:**

For your **Paper Proposal and Annotated Bibliography**, please submit the following:

* One-two paragraph(s) where you
  + succinctly name the question you are going to answer;
  + explain why this question is important/interesting to answer; and
  + provide a bit of background information on the issue so that someone who knows nothing about the topic (and that may include me!) has a good sense of what you’re talking about.
* Four Annotated References where you
  + provide the full citation for the reference;
  + include a paragraph that
    - summarizes – in your own words -- the main idea of the reference; and
    - explains what this reference has to do with your paper, i.e. why it’s important for you to read and understand it;
  + draw from at least two different genres (e.g. all four should not be law review articles);

**Week 5: 22 September: The Current U.S. Litigation Landscape**

**READ ONE** of the following cases (we’ll divvy these up in class the week before):

**Massachusetts v. Environmental Protection Agency**, 549 U.S. 497 (2007)

**Connecticut v. American Electric Power**, 582 F.3d 309 (2d Cir. 2009)

**Center for Biological Diversity v. National Highway Traffic Safety Administration**, 538 F.3d 1172 (9th Cir. 2008) (Pay particular attention to the NEPA claims.)

**Natural Resources Defense Council v. Kempthorne**, 506 F.Supp. 2d 322 (E.D. Cal, 2007) (Pay particular attention to the ESA and Climate Change aspects)

**Native Village of Kivalina v. EXXONMOBIL Corporation**, 663 F.Supp. 2d 863 (N.D. Cal, 2009). **Read also** “Complaint for Damages Demand for Jury Trial,” 2008 WL 594713 [[You can get there from the “Motions, Pleadings, and Filings” at the3 end of the Decision.]] Focus on the (delightful – admitting my bias here) “Civil Conspiracy” allegations, §§189-248 and §§ 268-282.

**READING RESPONSE:**

Global climate change is a fine laboratory for “creative lawyering.” These cases display different litigation strategies for addressing the U.S. contribution to global climate change. Each has potentially major implications for particular industries.

For your case:

* Summarize/brief your case;
* Did the court reach the right decision? Make sure you explain what you mean by “right”;
* What are the actual or potential impacts on U.S. business interests?

**Week 6: 29 September: U.S. Climate Change Policies & Business: Focus on the EPA’s “Endangerment Finding” under Section 202(a) of the Clean Air Act**

This was going to be a week on “Federal Climate Change Legislation,” until that became an oxymoron. Instead, we’ll focus on the most important current development in federal climate change policy.

**READ:** Environmental Protection Agency, “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule,” 74 CFR 66496, Dec. 15 2009,

<http://www.epa.gov/climatechange/endangerment/downloads/Federal_Register-EPA-HQ-OAR-2009-0171-Dec.15-09.pdf>,

[[For further information, the EPA webpage dedicated to the matter: <http://www.epa.gov/climatechange/endangerment.html>]]

**READING RESPONSE:**

Noon, 15 December 2009

From: Jane Gobble, Managing Partner, Gobble, [Frühstück, & Toast](http://www.dict.cc/german-english/Fr%C3%BChst%C3%BCck.html)

[To: Feckless First Year Associate](http://www.dict.cc/german-english/Fr%C3%BChst%C3%BCck.html)

This morning the EPA Administrator released the long awaited (and widely feared) “Endangerment Finding” for greenhouse gases. The CEO of Spewing Motors (SM), our most valued (and valuable) customer, is giving a press conference at 5 PM this evening, and I am supposed to advise him of the legal ramifications of the EPA’s decision.

As you know, I know *nothing* about environmental law.

Please write me a quick Memorandum (no more than two pages, but one will do) on the implications of the Endangerment Finding for GM. Specifically,

* What did the EPA Administrator find?
* Where does she get the authority to find what she found?
* What are the main implications (positive and/or negative) for SM?
* Should SM file a formal petition to challenge the finding?
* Does the Endangerment Finding have any implications for other industries beyond the automotive industry?

This is an emergency!!!!! I need this Memorandum in two hours. [[In other words: Please pretend that this is the real world, where you will be asked to perform miracles of legal analysis, and do not spend more than two hours on the assignment.]]

**Week 7: 6 October: California’s AB32, Global Warming Solutions Act**

**READ:** Selections from: California Air Resources Board, “Climate Change Scoping Plan,” Dec. 2008, <http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf>

Please **read** the “Executive Summary” and “Introduction.” Please skim over the rest just to get a good sense of the scope of the Plan, but please **pay particular attention** to at least one section that most pertains to your term paper (or to one section that particularly interests you).

(For more information on AB32, see CARB’s webpage at <http://www.arb.ca.gov/cc/cc.htm>)

**READING RESPONSE:** Look at the five Course Outcomes, way back on page one. Analyze the AB32 Scoping Plan with respect to any one of the outcomes.

**Week 8: 13 October: Carbon Trading**

**OPTIONAL READ:** We’ll cover the basics of carbon trading in class, but if you’d like a primer, please see Alan During et al., “Cap and Trade 101: A Federal Climate Policy Primer,” <http://www.sightline.org/research/energy/res_pubs/cap-and-trade-101/Cap-Trade_online.pdf>.

**Please DO READ here and there in the following commentaries on carbon trading:**

🡺 Larry Lohmann, Carbon Trading (2006), <http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/carbonDDlow.pdf> Lohmann is a stern critic of market solutions to a political and social crisis. pp.45-47 and Ch. 3 get at the heart of his critique.

🡺 Arielle Kramer (ed.), Greenhouse Gas Market 2010: Post Copenhagen and Climate Policy: Where Global Emissions Trading Goes from Here, International Emissions Trading Association (2010), <http://www.ieta.org/ieta/www/pages/getfile.php?docID=3474>

IETA “is dedicated to the establishment of effective market-based trading systems for greenhouse gas emissions by businesses that are demonstrably fair, open, efficient, accountable and consistent across national boundaries” (<http://ieta.org/ieta/www/pages/index.php?IdSiteTree=2>) Sampling from their 2010 report (see the “Messages”) and their website allows you to understand who they are, what they do, and why they believe what they believe.

**READING RESPONSE:** You are a law clerk for a major environmental NGO. The Directors are trying to define their organization’s public stance on cap and trade as a solution to mitigate greenhouse gas accumulation. They ask you for a BRIEF (i.e. no more than two pages) opinion:

🡺Empirical argument: **Is** cap and trade likely to be successful in staunching the accumulation of greenhouse gases?

🡺Normative argument: We are an organization committed to curbing environmental destruction stemming from overdevelopment and overconsumption of the Earth’s resources: **Should** we endorse cap and trade as a solution to greenhouse gas build-up?

🡺Conclude with a pithy encapsulation of your recommendation.

[[NOTE: This assignment is impossible to do in 200 pages, never mind in two pages. But as a lawyer, you may well be asked to do this kind of thing, so please think of this as fine professional training.]]

**Week 9: 20 October: Carbon Offsets**

**READ:** Clean Air-Cool Planet, “A Consumer’s Guide to Retail Carbon Offset Providers,” the Roman Numeral pages and pp.1-14 (2006), <http://www.cleanair-coolplanet.org/ConsumersGuidetoCarbonOffsets.pdf>

**WATCH:** Clips from “King of the Hill,” <http://www.imdb.com/video/hulu/vi393871385/> and

<http://www.imdb.com/video/hulu/vi997851161/>

**SEE:** Cheatneutral.com:[**http://www.cheatneutral.com/offset\_your\_cheating/**](http://www.cheatneutral.com/offset_your_cheating/)

[**http://www.cheatneutral.com/become\_a\_project/**](http://www.cheatneutral.com/become_a_project/)

[**http://www.cheatneutral.com/projects/**](http://www.cheatneutral.com/projects/)

**READING RESPONSE:** Oh, what the heck, don’t write anything. Just come to class able to explain what a “carbon offset” is and how one might (not) work. Maybe use your copious extra time to work on your term paper drafts, due in two weeks.

**Week 10: 27 October: Climate Justice and Business**

**READ:**

**🡺** Andrew C. Revkin, “Poor Nations to Bear Brunt as World Warms,” *New York Times*, April 1 2007, <http://www.nytimes.com/2007/04/01/science/earth/01climate.html?scp=1&sq=Poor%20Nations%20to%20Bear%20Brunt%20as%20World%20Warms%20&st=cse> and

🡺 Andrew C. Revkin, “Reports from Four Fronts on the War on Warming, *New York Times*, April 3 2007, <http://www.nytimes.com/2007/04/03/science/earth/03clim.html?page%20wanted=1> and

🡺Eric A. Posner & Cass R. Sunstein, “Climate Change Justice,” *96 Georgetown Law Journal* 1565 (2008)

**READING RESPONSE:** What *should* be the responsibility of U.S. businesses in mitigating global greenhouse gas buildup and in helping citizens of poor nations (or poor citizens of our own nation) to adapt to global climate change?

**Week 11: 3 November: To Be Arranged (but it may include peer review of your paper drafts…)**

**READ:** Sorry, no reading today.

**DUE: PARTIAL DRAFT OF YOUR FINAL PAPER (15% of your final grade)**

I won’t be grading this based on completeness, i.e. you are not penalized if you turn in less than a full version of your final paper, and you are not automatically rewarded if you do turn in a draft of the full version of your final paper. Obviously, though, the more you turn in, the more substantive feedback I can provide you as you prepare your final draft.

*This need not be a full draft!* It should, however, include:

* A one-paragraph *Abstract* that covers the entire terrain of the paper;
* A complete *Introduction* (1-2 pages) where you
  + Introduce your reader to the question you’re exploring;
  + Include a thesis statement that encapsulates your position on/answer to the question you’re exploring;
  + Explain why this is an important question to explore;
  + Outline the terrain you’ll be covering in the paper;
* At least *one completed section* (2-3 pages), where you
  + Offer one part of your argument or answer (fully referenced, please). In other words, this should mimic what your entire final draft will look like;
  + Explain what will come before and what will come after (in just a sentence or two) so that I have a context for this section of your paper. (If you’re submitting a full draft, you need not do this…);
* A *Conclusion* (probably 1 page or less) where you
  + Review the argument you just made;
  + Explain again why this is an important argument to consider;
  + Note aspects of your argument that must be left for someone else to cover.
* Full *citations* for *every* claim you make that did not spring from your own head.

**Week 12: 10 November: Student Presentations**

**Week 13: 17 November: Student Presentations**

**FINAL PAPERS DUE Friday 17 December, 5 PM.**

1. William R.L. Anderegg, James W. Prall, Jacob Harold, & Stephen H. Schneider, “Expert Credibility in Climate Change,” *Proceedings of the National Academies of Science*, June 21 2010, <http://www.pnas.org/content/early/2010/06/04/1003187107.full.pdf+html> [↑](#footnote-ref-2)