

CLIMATE CHANGE AND THE LAW

Spring 2024

Dean Jennifer Rushlow
Pronouns: She/her/hers
jrushlow@vermontlaw.edu
Office: Debevoise 214

This syllabus will be updated periodically. You will always be able to find the most up-to-date syllabus on Canvas.

Teams link: [Climate Change and the Law CLM 5212 | General | Microsoft Teams](#)

Course Learning Outcomes:

By the end of the semester, you should be able to:

1. Comprehend the fundamental causes and consequences of anthropogenic climate change.
2. Comprehend introductory renewable energy law and technologies.
3. Comprehend, evaluate, and critique an array of law and policy approaches to climate change mitigation at multiple levels of government.
4. Comprehend, evaluate, and critique private sector approaches to environmental governance as it relates to climate change mitigation.
5. Evaluate options for reducing greenhouse gas emissions from different sectors.
6. Recognize and analyze the disproportionate impacts of climate change law and policy actions on particular communities or groups of people.
7. Apply the above knowledge and skills to particular cases.

Class Meeting Time:

MW 11:20 AM-12:35 PM; Debevoise Map Room

Dean Rushlow Office Hours:

Wednesdays 1:00-2:00 (starting on 1/31) in my office, or by appointment with Executive Assistant Dee Gish (dgish@vermontlaw.edu).

Attendance:

See the Student Handbook for attendance requirements.

Grading and Assessments:

1. Participation, professionalism, and mutual respect: 10%

You must be prepared for class, prompt in attendance, and professional in all interactions. You must meet all assignment deadlines. Lateness will result in a downward grade adjustment. Reading assignments must be completed before attending class and you must be prepared to

discuss the readings. You are expected to show respect for me, your classmates, and their differing contributions. Refrain from engaging in other activities on your computers, phones, and other electronic devices while in class. It is fairly obvious whether you are taking notes and engaged in class or are absorbed by some other distraction like email, social media, etc. The latter is a very distracting discourtesy to me and your classmates, and I will address it in your participation score. If guest speakers join us, you should be prepared to engage and ask meaningful questions. I expect you to show cultural sensitivity and keep an open mind, recognizing that we are here to learn and we all have room to grow in how we discuss and approach issues beyond our personal experiences – including me, and I welcome feedback.

2. Current event update: 10%

Climate change is in the news daily and it is an overwhelming task to stay up to date. We'll attempt to do so as a group. At the beginning of each class, 1-2 students will be assigned to do a 3-5 minute presentation on a very current event of your choosing directly related to the course. It does not necessarily need to be directly related to law or policy as long as it is a useful update for the class. The presentation should be informal but well organized. No powerpoints or other visuals are needed, other than perhaps writing/drawing on the board ahead of class. Topics should be no more than 5 days old. Choose news from credible sources. I suggest you check out the available subscription to E&E (fka Environment & Energy Daily, particularly Climatewire and Energywire) through the [VLGS library](#). Other recommended climate news sources include Inside Climate News, Grist, and DeSmog, but there are many out there, and regular news outlets are fine too.

3. En-ROADS Class Exercise: 15%

TBD

4. Midterm: 25%

Take-home. Details TBA.

5. Final exam: 40%

Held in-person during the assigned exam period, date and time TBD. The exam will be in a short essay format, closed book with outlines permitted. Details TBA.

Note on Artificial Intelligence (AI) in course assignments:

Unless I specifically indicate otherwise, the use of artificial intelligence services, including generative AI applications like ChatGPT, is prohibited in your course assignments.

Reading:

Textbook: GLOBAL CLIMATE CHANGE AND U.S. LAW (3d ed., Michael B. Gerrard, Jody Freeman, and Michal Burger, eds., 2023) (Gerrard). Available through Barrister's Bookshop.

Other readings are either available publicly online and linked in the syllabus, or provided on the class Canvas page. The following books are excerpted on Canvas and identified using the abbreviations indicated below:

1. REVESZ, *ET AL.*, ENVIRONMENTAL LAW AND POLICY (5th ed., 2024). (Revesz)
2. DAVIES, *ET AL.*, ENERGY LAW AND POLICY (3rd ed., 2022). (Davies)
3. EISEN, *ET AL.*, ENERGY, ECONOMICS, AND THE ENVIRONMENT (5th ed., 2019). (Eisen et al.)
4. JOEL B. EISEN, ADVANCED INTRODUCTION TO LAW AND RENEWABLE ENERGY (2021). (Eisen)
5. SHALANDA BAKER, REVOLUTIONARY POWER: AN ACTIVIST’S GUIDE TO THE ENERGY TRANSITION (2021). (Baker)
6. DANIEL A. FARBER & CINNAMON P. CARLARNE, CLIMATE CHANGE LAW (2nd ed., 2022). (Farber)
7. COPLAN, *ET AL.*, CLIMATE CHANGE LAW: AN INTRODUCTION (2021). (Coplan)
8. MICHAEL B. GERRARD & JOHN C. DERNBACH, LEGAL PATHWAYS TO DEEP DECARBONIZATION IN THE UNITED STATES (2019). (Dernbach)

Class #	Date	Topics Covered	Reading	Notes
1	1/17	Course Intro	<ol style="list-style-type: none"> 1. Syllabus 2. Gerrard, pp. 5-29. 3. SKIM IPCC Climate Change 2023 Synthesis Report Summary for Policymakers 	Current event assignments posted on Canvas.
2	1/22	Cost analysis	<ol style="list-style-type: none"> 1. Revesz, pp. 102-104, 119-126. (Canvas) 2. Isabella Backman, <i>Stanford explainer: Social cost of carbon</i>, Stanford News, June 7, 2021. 3. U.S. Environmental Protection Agency, Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances, November 2023. Read Executive Summary. (Canvas) 	
3	1/24	Climate science in law and policy decision making	<ol style="list-style-type: none"> 1. Maria Banda, <i>Climate Science in the Courts: A Review of US and International Judicial Pronouncements</i>, Environmental Law Institute, April 21, 2020. Read pp. 11-25, 77-85 (Oakland/San Francisco and <i>Urgenda</i> cases). (Canvas) 	
	1/29		Class cancelled	
4	1/31	Intro to energy law, pt 1: fossil fuel energy use	<ol style="list-style-type: none"> 1. Davies, pp. 89-108. (Canvas) 2. Eisen, et al., c. 1 (pp. 1-33). (Canvas) 	
5	2/5	Intro to energy law, pt 2: electricity regulation	<ol style="list-style-type: none"> 1. Eisen, c. 4 and 5 (pp. 75-106). (Canvas) 	
6	2/7	Renewable technologies	<ol style="list-style-type: none"> 1. Eisen, c. 2 (pp. 14-44). (Canvas) 	
7	2/12	Transportation, energy efficiency	<ol style="list-style-type: none"> 1. Davies, c. 6 excerpts. (Canvas) 2. ACEEE, Halfway There: Energy Efficiency Can Cut Energy Use and Greenhouse Gas Emissions in Half 	

			by 2050, September 2019 . Read Executive Summary, skim remainder. (Canvas)	
8	2/14	Just transition	<ol style="list-style-type: none"> Nicholas Kusnetz, Canada's Tar Sands: Destruction so Vast and Deep it Challenges the Existence of Land and People, Inside Climate News, Nov. 21, 2021. (Canvas) Climate Justice Alliance, Just Transition Framework. (Canvas) Baker, c. 3. (pp. 65-88) (Canvas) 	
9	2/19	International context	<ol style="list-style-type: none"> Gerrard, c. 2. 	
10	2/21	Class exercise	TBA	
11	2/26	Federal overview Tool: Sticks	<ol style="list-style-type: none"> Gerrard, c. 3. Coplan, pp. 25-33 	
12	2/28	Clean Air Act overview	<ol style="list-style-type: none"> Coplan, pp. 40-43. (Canvas) Gerrard, c. 4. 	
			1.	
SPRING BREAK!				
13	3/11	Clean Air Act- Mobile sources	<ol style="list-style-type: none"> <i>Massachusetts v. EPA</i>. Read whole case. (Canvas) 	
14	3/13	Clean Air Act – Stationary sources	<ol style="list-style-type: none"> <i>W. Virginia v. EPA</i>. Read whole case. (Canvas) 	
15	3/18	Tool: Carrots	<ol style="list-style-type: none"> Eisen, c. 3 (pp. 45-74). (Canvas) Clean Air Task Force, Inflation Reduction Act of 2022: A Summary of Tax Incentives, 2022. (Canvas) 	
16	3/20	Post-W. VA Power Plant Regulations	<ol style="list-style-type: none"> Gerrard, pp. 485-498. Environmental Protection Agency, Fact Sheet: Greenhouse Gas Standards and Guidelines for Fossil Fuel-Fired Power Plants Proposed Rule. Read: Summary, Overview, and pp 5-7 (only the two sections on existing power plants). (Canvas) 	
17	3/25	Tool: Markets	<ol style="list-style-type: none"> Farber, c 4. (Canvas) Dernbach, pp. 80-86. (Canvas) 	
18	3/27	State actions	<ol style="list-style-type: none"> Gerrard, c. 11. 	
19	4/1	Legal challenges against states	<ol style="list-style-type: none"> Massachusetts Global Warming Solutions Act (2008) <i>Kain v. Department of Environmental Protection</i> Decision. (Canvas) Sue Reid & Jennifer Rushlow, <i>Behind the Curtain: Insiders' View of Developing and Enforcing State Climate Change Laws</i>, 50 Env'tl. L. Rep. 10466 (2020). Read pp. 10466-10483. (Canvas) 	

20	4/3	Our Children's Trust litigation pt. 1	<ol style="list-style-type: none"> 1. Our Children's Trust, Juliana v. United States Timeline. 2. <i>Juliana v. United States</i>, Ninth Circuit Court of Appeals Decision on Interlocutory Appeal, January 17, 2023. Read pp. 11-64. (Canvas) 	
21	4/8	Our Children's Trust litigation pt. 2	<ol style="list-style-type: none"> 1. Our Children's Trust, Held v. State of Montana Timeline. 2. <i>Held v. State of Montana</i> Decision (Canvas) – GROUP READING ASSIGNMENTS TBA. 	
22	4/10	Civil Remedies	<ol style="list-style-type: none"> 1. Gerrard, pp. 295-301. 2. <i>State of Rhode Island v. Chevron</i>, Complaint. Skim pp. 50-114, read pp. 115-141. (Canvas) 3. Keith Goldberg, <i>Justices Stay out of Climate Suit Forum Fight</i>, Law360, April 24, 2023. (Canvas) 4. <i>Municipalities of Puerto Rico v. Exxon Mobil Corp.</i>, Complaint. Read pp. 1-10, 214-219. (Canvas) 	
23	4/15	International litigation	<ol style="list-style-type: none"> 1. Gerrard, pp. 304-307. 2. TBA 	
24	4/17	Corporate environmental governance	<ol style="list-style-type: none"> 1. Vandenberg, <i>Private Environmental Governance</i>, 99 Cornell L. Rev. 129 (2013). Read pp. 130-175. (Canvas) 	
25	4/22	Corporate financial risk management and disclosure	<ol style="list-style-type: none"> 1. Gerrard, c. 9. 2. Kimberly A. Houser & Lindsay Sain Jones, <i>Investor-Driven Climate Accountability</i>, 57 UC Davis L. Rev. (forthcoming 2024). Read pp. 17-33 (Canvas) 	
26	4/24	Land use and transportation	<ol style="list-style-type: none"> 1. Gerrard, pp. 445-470. 	
27		Make up class time	<ol style="list-style-type: none"> 1. Watch Vermont Senate S.259 Climate Superfund hearing. Link: 2. Gerrard, c. 19. 	
28	4/29	Climate adaptation	<ol style="list-style-type: none"> 1. Gerrard, c. 18. 	
	5/7	Final Exam		