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Climate Change

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Research Guides

Climate Change

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Guide Index

Home
Primary Sources
Secondary Sources
Computerized Research
Interest Groups and Associations

Home

Introduction

Climate change law and greenhouse gas regulation are emerging areas of the law which relate to several areas of well-established environmental law, but do not themselves have identifiable bodies of doctrine. Until very recently, neither the U.S. nor its states provided for regulation of greenhouse gas emissions whatsoever, despite the growing awareness of scientists, lawmakers and citizens alike that our day-to-day activities are slowly changing the composition of our atmosphere. Though a number of important questions remain unanswered, including the best way to curb emissions, how drastically they should be cut, and how expensive these reductions will be, significant developments in this area of the law are happening now and are likely to increase in the coming years.

Climate change law has developed along three distinct paths: common law liability claims, regulation under existing statutes, and new legislation. First, a number of nuisance and tort claims have been filed against large emitters of greenhouse gases for their alleged contributions to global warming and the alleged climate effects thereof. Second, the EPA and state regulatory agencies have come under attack for not regulating greenhouse gases as “pollutants” under the Clean Air Act. Finally, lawmakers in the U.S. Senate and House, as well as state legislators, have tried for years with limited success to draft comprehensive climate change legislation.

Overview

Most of the significant action in climate change law development is on the federal level. Many states, local governments and industry alliances have also undertaken either mandatory or voluntary initiatives to reduce greenhouse gas emissions. It is likely that if or when any comprehensive federal legislation is enacted, local and state law could be preempted in part or in whole, thus dampening the significance of state climate change law. However, because such a scenario has not played out yet, this Guide directs the reader to a variety of sources of related law, science and policy at the international, federal, state and local levels. The growing attention to climate change issues has also spawned a number of informative websites, podcasts, reports and other secondary materials which should play a large role in educating researchers in this field.

Scope

This Guide will assist the reader in identifying the major areas of development in the law related to climate change and greenhouse gas regulation. This Guide also points out that as of April 2011, there has been no enactment of comprehensive federal legislation to address greenhouse gas emissions, but that many fruitful areas of research nonetheless exist. These include case law, current and related environmental statutes and regulations, proposed legislation, and secondary materials. Because an understanding of this area of the law necessitates at least a basic level of understanding of the science and policy principles underlying this field of law, this Guide also directs the reader to non-legal resources which provide the researcher with such an understanding.

About the Author

Talmadge Simpson is a third-year student at the Georgia State University College of Law. He specializes in environmental law as a Project Assistant with Balch & Bingham, LLP's Environmental and Natural Resource Practice Group in Atlanta, GA. Previous legal experience includes Project Assistant with Balch & Bingham's Environmental Practice Group in Birmingham, AL, legal internships with Troutman Sanders, LLP's Environmental Practice Group and the Environmental Protection Agency's Region 4 offices in Atlanta, GA, and Litigation Assistant with Simpson Beatty LLP in Austin, TX.

Before law school, he earned a B.S. in Environmental Science at the University of Texas San Antonio and worked as an Environmental Compliance Specialist with Georgia Power Company in Atlanta, GA. Originally from Austin, TX, Talmadge lives in Northwest Atlanta with his wife, Lindsey, and their two dogs. The couple will be welcoming their daughter, Parker, in May 2011.

Disclaimer

This research guide is designed as an overview and starting point for the research of Climate Change Law. It does not provide legal advice or opinion. The author does not guarantee the accuracy, thoroughness, or usefulness of the information provided. The guide is current as of April 2011, and laws, rules or regulations could have changed since the completion of this guide. Additionally, secondary sources are updated periodically and links or annotations may change. For legal questions, please consult an attorney. For questions on how to proceed with your research, please contact the Georgia State University reference librarians.

Acronyms

CAA	Clean Air Act
CO2	Carbon Dioxide
CWA	Clean Water Act
EPA	Environmental Protection Agency
EPAct	Energy Policy Act
ESA	Endangered Species Act
GHG	Greenhouse Gas
NEPA	National Environmental Policy Act
NHTSA	National Highway Traffic Safety Administration
PSD	Prevention of Significant Deterioration

Back to Top

Primary Sources

Federal Statutes

As of the publishing of this Research Guide, there has been no act of Congress with a specific purpose of regulating manmade greenhouse gas emissions. However, there are several current environmental laws which regulate industrial activity in ways which have been found to necessitate greenhouse gas emission limits. Additionally, Congress has enacted laws to further study, fund and facilitate programs that address climate change without providing for specific cuts to emissions.

Clean Air Act (CAA)

CAA § 202(a)(1), 42 U.S.C. § 7521(a)(1), provides in relevant part that EPA “shall by regulation prescribe ... standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in [the Administrator's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.”

CAA § 302(g), 42 U.S.C.A. § 7602(g), defines “air pollutant” broadly, which includes “any air pollution agent or combination of such agents, including any physical, chemical ... substance or matter which is emitted into or otherwise enters the ambient air ... .” The Supreme Court found in *Massachusetts v. EPA* that this "sweeping" definition of "pollutant" includes carbon dioxide, and as such, the EPA has authority under the CAA to regulate carbon dioxide.

CAA § 111(b)(1), 42 U.S.C.A. § 7411(b)(1), requires the EPA Administrator to "(A) publish (and from time to time thereafter shall revise) a list of categories of stationary sources [and] include a category of sources in such list if in his judgment it causes, or contributes significantly to, *air pollution which may reasonably be anticipated to endanger public health or welfare*. (B) Within one year after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category." (emphasis added). This is a mandate that the EPA establish "performance standards," *i.e.* emission caps, for stationary sources of "pollutants" it finds to endanger public health or welfare. Because "pollutant" now includes carbon dioxide under the CAA, the EPA is required to make a determination as to whether carbon dioxide (and other greenhouse gases) pose such an endangerment.

National Environmental Policy Act (NEPA)

NEPA, ***42 U.S.C. § 4321, et seq. (1969)***, was one of the first laws ever written that establishes a national framework for protecting the environment. NEPA's key feature is to require all branches of government to conduct an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) prior to undertaking any "major federal action," a broadly defined term which in some instances also includes private sector development, that significantly affects the environment. These requirements mandate the consideration of environmental impacts, and it is now understood that climate change is such an impact.

Endangered Species Act (ESA)

The ESA, ***16 U.S.C. § 1531, et seq. (1973)***, requires federal agencies to consult with the U.S. Fish and Wildlife Service to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. Because one of the major risks associated with climate change is habitat loss, the potential for liability under the ESA arises if it can be shown that an action has contributed to climate change in a way that adversely affects a designated habitat of a protected or endangered species.

Clean Water Act (CWA)

CWA § 303(d)(1), 33 U.S.C. § 1313(d)(1), provides that "(A) [e]ach state shall identify those waters within its boundaries for which the effluent limitations … are not stringent enough to implement any water quality standard applicable to such waters." That section of the CWA further provides that "(C) [e]ach State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies . . . as suitable for such calculation." It is arguable that acidification of the world's oceans, including those along the coasts of the United States, is a form of "pollutant" for which a "total maximum daily load" is "suitable for calculation." If acidification is a pollutant, then increased carbon dioxide levels in the atmosphere, which is absorbed by oceans and leads to increased acidification, may be regulated under the CWA.

National Climate Program Act (NCPA)

As described in § 2 of the Act, the purpose of the NCPA, ***15 U.S.C.A § 2901, et seq.***, is "to establish a national climate program that will assist the Nation and the world to understand and respond to natural and man-induced climate processes and their implications." The Act vests authority in a program office to oversee the implementation of a five-year plan, to be prepared in cooperation with other Federal agencies, State offices, business groups and research and academic institutions. The NCPA also requires the office to prepare an annual report to the President and Congressional committees, review participating agency budget requests, coordinate interagency participation in international climate-related and experimental climate forecasting activities, and provide financial assistance, primarily in the form of grants to public or private educational institutions, state agencies, and other persons or institutions qualified to conduct climate-related studies or to provide climate-related services.

Global Change Research Act of 1990

This Act, ***15 U.S.C. § 2921, et seq.***, purports to establish "a United States Global Change Research Program aimed at understanding and responding to global change, including the cumulative effects of human activities and natural processes on the environment, to promote discussions toward international protocols in global change research, and for other purposes."

Energy Policy Acts

Sections 1601-1609 of the Energy Policy Act (EPAct) of 1992, ***42 U.S.C. §§ 13381-13389***, provide for the Secretary of Energy to submit a report to Congress on the implications of U.S. compliance with the 1992 United Nations Framework Convention on Climate Change, the inclusion of a least-cost strategy in the National Energy Plan, establishment of a Director of Climate Protection within the Department of Energy, a national inventory of greenhouse gases, establishment of an innovative environmental technology transfer program, and establishment of a Global Climate Change Response Fund.

The EPAct of 2005 added Sections 1610 and 1611, ***42 U.S.C. §§ 13390-91***, to Climate Change portion of the EPAct of 1992 and creates the Climate Change Technology Program and a Committee for its oversight and provides for a "reduction in greenhouse gas intensity," which does not necessarily mandate reductions in emissions, but rather the level of emissions per unit of economic output.

The Energy Policy and Conservation Act (EPCA), ***42 U.S.C. § 6201, et. seq.***, provides for numerous energy efficiency measures across a broad cross-section of industrial and consumer activities. Of particular recent significance is the requirement that the National Highway Traffic Safety Administration set corporate average fuel-economy (CAFE) standards at the maximum feasible level. Due to the direct correlation between the amount of energy consumed and carbon dioxide (CO_2) emissions, increased fuel efficiency decreases the rate of CO_2 emissions, even though the actual volume of emissions could remain stable or increase with increased energy consumption.

The Energy Independence and Security Act of 2007 (EISA), ***P.L. 110-140***, amends various sections of previous energy-related Acts and contains many energy provisions that could lead to reductions in greenhouse gas emissions without mandating specific reductions. The Act also addresses climate change issues in several ways, including expanding the national renewable fuel standard requiring a minimum amount of renewable fuels to be blended into transportation fuels each year, focusing on research, development, and demonstration of technologies to capture and store carbon dioxide (rather than emitting it to the atmosphere), and establishing an Office of Climate Change and Environment within the Department of Transportation (DOT).

Federal Rules & Regulations

Environmental Protection Agency (EPA) Rules

The EPA's "Endangerment and Cause or Contribute Findings," *74 Fed. Reg. 66496 (Dec. 15, 2009)*, was its first step toward regulating greenhouse gases under the CAA and consists of two components. First, the Administrator found that the current and projected concentrations of the six key well-mixed greenhouse gases -- carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6) -- in the atmosphere threaten the public health and welfare of current and future generations. This is referred to as the "endangerment finding." Second, the Administrator found that the combined emissions of these well-mixed greenhouse gases from new motor vehicle and new motor vehicle engines contribute to the greenhouse gas pollution which threatens public health and welfare. This is referred to as the "cause or contribute finding."

The "Greenhouse Gas Tailoring Rule," *75 Fed. Reg. 31514 (Jun. 3, 2010)*, is the second step toward regulating greenhouse gases under the CAA. This rule "tailors" permitting programs to limit the number of facilities that would be required to obtain relevant CAA operating permits based on their greenhouse gas emissions. Covered facilities are limited to new emission sources at power plants, refineries and other large industrial plants that emit over 75,000 tons/year of CO_2 while exempting smaller sources like farms, restaurants, schools and other facilities.

The "Greenhouse Gas Reporting Rule," 7*4 Fed. Reg. 56260 (Oct. 30, 2009)*, requires approximately 10,000 sources of greenhouse gases, covering 31 categories of

industry, to report annually their volumes of emissions of six types of greenhouse gases, including carbon dioxide. The covered facilities account for about 85% of all domestic, man-made emissions. The Rule also creates a reporting system whereby EPA can manage the data and have it readily available as input for calculating the appropriate levels at which covered facilities will eventually be required to make emission reductions.

National Highway Traffic Safety Administration (NHTSA) Rules

The new proposed "Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles," *75 Fed. Reg. 74152 (Nov. 30, 2010)*, jointly issued by the NHTSA and EPA, purport to "establish a comprehensive Heavy-Duty National Program that will reduce greenhouse gas emissions and increase fuel efficiency for on-road heavy-duty vehicles." The two primary standards set by this rulemaking would require reduced rates of CO2 emission per unit of tailpipe exhaust as well as increased mile-per-gallon efficiency for auto companies' vehicle fleets.

Federal Case Law

Massachusetts v. EPA, 549 U.S. 497, 127 S.Ct. 1438 (2007).

In the most important court decision ever to address greenhouse gas emissions and climate change, the Supreme Court of the United States held that the Environmental Protection Agency (EPA) has authority under the Clean Air Act (CAA) to regulate greenhouse gas emissions from automobiles. The Court found that EPA was required under the CAA to determine if greenhouse gases contribute to climate change or provide some reasonable explanation as to why it cannot make such a determination. The Court further found that the CAA mandates that if EPA finds greenhouse gases to contribute to climate change, they must be regulated as "pollutants" in order to protect public health and welfare.

American Elec. Co. Inc v. Connecticut, 582 F.3d 309 (2d Cir. 2009), ***cert. granted by American Elec. Co. Inc. v. Connecticut***, 131 S. Ct. 813 (2010).

Eight states, a city, and three land trusts separately filed state and federal common law nuisance claims against the same six electric power corporations that owned and operated fossil-fuel-fired power plants in twenty states, seeking abatement of defendants' ongoing contributions to the public nuisance of global warming. The Second Circuit reversed the district court and held that the complaints did not present a non-justiciable political question; that all of Plaintiffs have standing; that the federal common law of nuisance governs their claims; that Plaintiffs have stated claims under the federal common law of nuisance; that their claims are not preempted by federal legislation. In December 2010, the Supreme Court of the United States granted the energy companies' writ for certiorari to decide whether plaintiffs had standing to seek "judicially-fashioned emissions caps," whether a cause of action to cap carbon dioxide emissions may stand "where no statute creates such a cause of action," and whether determining "reasonable levels" for emissions caps is an "initial policy determination of a kind clearly for nonjudicial discretion." The Petitioners' Petition for Writ of Certiorari is available on Westlaw at 2010 WL 3054374.

Comer v. Murphy Oil, 585 F.3d 855 (5th Cir. 2009).

Owners of land and property along Mississippi Gulf coast brought putative class action seeking compensatory and punitive damages against oil companies and energy companies alleging the operation of their companies caused emission of greenhouse gasses that contributed to global warming and added to ferocity of hurricane that destroyed their property. Plaintiffs claimed common-law actions of public and private nuisance, trespass and negligence, relying on an alleged causal links between greenhouse gas emissions, global warming, rising sea levels and the added ferocity of Hurricane Katrina, and the destruction of the plaintiffs' property. Plaintiffs further claimed unjust enrichment, fraudulent misrepresentation and civil conspiracy, based on alleged injuries caused by defendants' public relations campaigns and pricing of petrochemicals. With respect to the first set of claims, the Fifth Circuit held defendants' alleged contribution to the harm to be "sufficient for traceability purposes" and reversed the District Court's dismissal for lack of standing. However, the court upheld the dismissal of plaintiffs' second set of claims as non-justiciable political questions for which they lack standing. The first set of claims was remanded to the district court for further proceedings.

Friends of the Earth, Inc. v. Mosbacher, 488 F.Supp.2d 889 (N.D. Cal. 2007).

Plaintiff environmental organization sued financial backers of international fossil fuel projects alleging violations of the National Environmental Policy Act (NEPA), which requires developers to conduct a review of an applicable project's impact on the environment prior to beginning work on the project. The U.S. District Court for the Northern District of California held that NEPA applies to major federal government projects that contribute to climate change, and that genuine issues of material fact existed as to whether the particular energy projects at issue constitute "major Federal action" triggering such requirements. The parties were ordered to participate in a "case management conference," which led to a settlement between the parties.

Central Valley Chrysler-Jeep, Inc. v. Goldstene, 529 F.Supp.2d 1151 (E.D. Cal. 2007).

Automobile dealers and manufacturers challenged the validity of regulations promulgated by California Air Resources Control Board (CARB) regulating vehicle emissions of greenhouse gases and alleging that such regulations were preempted by the federal Clean Air Act. The District Court held that whereas the regulations were granted a waiver of preemption under the CAA, they were not preempted thereby, and thus the California regulations were validly promulgated.

Center for Biological Diversity v. National Highway Traffic Safety Admin., 538 F.3d 1173 (9th Cir. 2008)

Eleven states, the District of Columbia, city, and public interest organizations petitioned for review of National Highway Traffic Safety Administration (NHTSA) rule setting corporate average fuel economy (CAFE) standards for light trucks. The Ninth Circuit Court of Appeals ruled that the National Highway Traffic Safety Administration (NHTSA) violated the Energy Policy and Conservation Act (EPCA) by exempting SUVs and pickup trucks from fuel-economy standards. The court also held that the EPCA requires that the NHTSA undertake a full environmental review of the gas-mileage standards, which includes the impact on climate change.

State Laws

Several states have taken initiatives, by executive order, act of the legislature, or state agency action, to regulate greenhouse gas emissions or otherwise address climate change. Due to the varied nature of the actions by each individual state, this section is organized by type of issue addressed or initiative taken by the various state actions.*

State Climate Change Commissions - Executive or legislative commissions examine the possible consequences of climate change for a state and the costs and benefits associated with addressing them, and develop recommendations for appropriate policies.

Alaska H. Res. 30 (2006) (enacted).

Arkansas H. Res. 2460 (2007) (enacted).

Arizona - Governor's Executive Order 2010-06 (2010).

Kansas - Governor's Executive Order 0803 (2010).

North Carolina S. Res. 1134 (2005) (enacted).

Greenhouse Gas Reporting - Predating and in addition to federal GHG Reporting requirements, several states implemented either mandatory or voluntary reporting of greenhouse gas emissions from major sources. The Climate Registry is a non-profit organization that aims to measure and publicly report greenhouse gas emissions in a common, accurate, and transparent manner consistent across industry sectors and borders.

California S. Res. 1771 (2000) and S. Res. 527 (2001) (both enacted).

West Virginia S. Res. 337 (2007) (enacted).

Wisconsin Department of Natural Resources Rule NR 438

Economy-Wide Greenhouse Gas Reductions - Legislation establishing an economy-wide emissions target for the entire state.

California H. Res. 32 (Global Warming Solutions Act of 2006) (enacted).

Hawaii H. Res. 226 (2007) (enacted).

Minnesota S. Res. 145 (2007) (enacted).

Greenhouse Gas Performance Standards for Vehicles - California is the clear leader in this area, and the EPA allows by law other states to adopt either the federal emission standard or California's more stringent standard. Other states that have already adopted or are in the process of adopting the California standard include Arizona, Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.

California Assembly Bill 1493, codified at West's Ann. Cal. Health & Safety Code § 43018.5 (effective Jan. 1, 2005), provides for a new approach to passenger vehicles (cars and light trucks) by combining the control of smog-causing pollutants and greenhouse gas emissions into a single coordinated package of standards. The new approach also includes efforts to support and accelerate the numbers of plug-in hybrids and zero-emission vehicles in California.

*Much of the content in this box is also provided on the website of the Pew Center's Center on Global Climate Change. The link to Pew's website is located on the Computerized Research tab of this Guide.

Federal Bills Not Enacted

H.R.1023 - No More Excuses Energy Act of 2011 - Specifies that the term “air pollutant” in Section 302(g) of the Clean Air Act ("CAA") does not include “carbon dioxide, water vapor, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride.'' It also states that nothing in the CAA shall be interpreted as “authorizing or requiring the regulation of climate change or global warming.” In addition, this bill includes, among other things, tax benefits for both conventional and clean energy technologies and a requirement to authorize new oil and gas development projects on the coastal plain of Alaska.

H.R.910 - Energy Tax Prevention Act of 2011 - Prohibits the EPA from promulgating any regulation or taking any action related to (or that takes into consideration) the emission of a greenhouse gas to address climate change. A greenhouse gas is defined in this bill as water vapor, carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, perfluorocarbons or “any other substance subject to, or proposed to be subject to, regulation, action, or consideration under this Act to address climate change.” This bill indicates that the term “air pollutant” in Section 302(g) of the CAA does not include a greenhouse gas.

H.R.279 - To prohibit any Federal agency or official, in carrying out any Act or program to reduce the effects of greenhouse gas emissions on climate change, from imposing a fee or tax on gaseous emissions emitted directly by livestock (introduced by Fortenberry (R-NE) January 12, 2011).

S.689 - Energy Security Act of 2011 - Establishes a national oil independence goal to reduce oil consumption by an amount equal to or greater than the quantity of oil imported by the United States from outside of North America by 2030. In addition, it develops a national oil independence plan that describes programs that will aid in meeting or exceeding the goals of such a plan.

H.R. 2454 - American Clean Energy and Security Act of 2009 ("ACES" or "Waxman-Markey") - the most ambitious of the various cap-and-trade bills so far and also the most successful, having passed in the House in June 2009. Cap-and-trade legislation purports to set various schedules over a number of years which correspond to a maximum amount of emissions that are allowed. Any regulated entity which can reduce its emissions below these levels can sell their extra "allowances" to companies who are having more trouble meeting the limits.

Back to Top

Secondary Sources

American Law Reports

Jay M. Zitter, J.D., ***Liability of Corporations for Climate Change and Weather Conditions***, 46 A.L.R.6th 345 (2009). This ALR gives a broad overview of the primary issues associated with climate change and provides a survey of the potential sources of liability companies may face for alleged contributions to climate change.

Zitter, ***Construction and Application of § 202(a)(1) of Clean Air Act (42 U.S.C.A. § 7521(a)(1)) Allowing for Promulgation of Standards Applicable to Emission of Air Pollutants from New Motor Vehicles or Engines, Which Cause, or Contribute to, Air Pollution, Which May Reasonably be Anticipated to Endanger Public Health or Welfare***, 13 A.L.R. Fed. 2d 703 (2006). This article analyzes the then-potential for regulation of greenhouse gases under the Clean Air Act and provides a good background understanding of the regulatory mechanisms between the Clean Air Act and EPA's authority.

American Jurisprudence

Jack K. Levin, J.D., ***et al., Stabilization of Greenhouse Gases***, 27A Am. Jur. 2d Energy and Power Sources § 97 (updated March 2011) - This article discusses legislation dealing with the production, distribution, and use of energy, the development of alternative sources of energy, conservation of energy. § 97 focuses in particular on the strategies to stabilize emissions of greenhouse gases from these industry sectors.

George Blum, J.D., ***et al***., ***Generally; Standards***, 61B Am. Jur. 2d Pollution Control § 532 (updated March 2011) - This article analyzes the EPA's authority to regulate greenhouse gas emissions from motor vehicles under the Clean Air Act, as decided by the Supreme Court in M*assachusetts v. EPA*.

Jack K. Levin, J.D., ***et al., Overview of Energy Policy Statutes***, 27A Am. Jur. 2d Energy and Power Sources § 91 (updated March 2011) - This article focuses on energy policy but references statutory provisions addressing climate change. It also provides citations to relevant climate change statutory provisions.

Georgia Jurisprudence

Edward Esping, J.D., ***et al., National Requirements for Mobile Sources***, 9 Ga. Jur. Environmental Law § 7:25 - provides a brief summary of federal regulation of mobile sources under the Clean Air Act. Due to a lack of state law on the topic, there are no references to Georgia materials.

Law Review Articles

1. Blake Hudson, ***Climate Change, Forests, and Federalism: Seeing the Treaty for the Trees***, 82 U. Colo. L. Rev. 363 (Spring 2011).

This article about the U.S. roles in international environmental treaties contains a section which discusses the important function that forestry management policies play in climate change. The article further discusses U.S. participation, and lack thereof, in various climate change treaties on its way to arguing that any such treaties should include market-based mechanisms to facilitate such participation and avoid legal hurdles.

2. Scott H. Segal, ***New Source Performance Standards for Global Greenhouse Gas Emissions from the Power and Refining Sectors: Wrong Mechanism at the Wrong Time***, 41 Envtl. L. Rep. 10312 (April 2011).

This article argues that EPA regulation of greenhouse gas emissions from new sources in the energy sectors is the wrong approach. This point is bolstered by a look at the economic costs and the technological and practical issues with EPA's current approach. Rather, the author advocates comprehensive federal legislation that covers a large cross-section of industries and uses market-based mechanisms.

3. Stephen M. Johnson, ***From Climate Change and Hurricanes to Ecological Nuisances: Common Law Remedies for Public Law Failures?*** 27 Ga. St. U. L. Rev. 565 (Spring 2011).

GSU's own analyzes a recent uptick in common law actions against companies alleged to be contributing to global warming while pointing out a lack of available remedies under current public law related to the environment. The author compares and contrasts the common law and public law approaches to regulating greenhouse gas emissions and argues that the two are actually complements of one another. Included in these discussions is analysis of recent climate change case law and statutory and regulatory developments.

4. Ashley E. Breakfield, ***Political Cases or Political Questions: The Justiciability of Public Nuisance Climate Change Litigation and the Impact on Native Village of Kivalina v. ExxonMobil***, 17 Hastings W.-N.W. J. Envtl. L. & Pol'y 39 (Winter 2011).

This article highlights the "rapidly changing area of tort-based climate change law," with a focus on the political question doctrine as a barrier for plaintiffs bringing suit. In particular, the article looks at the 9th Circuit's opinion in *Kivalina* and how this case is illustrative of the role of the political question doctrine in tort-based climate change litigation.

5. Megan S. Chapman, ***Climate Change and the Regional Human Rights Systems***, 10 Sustainable Dev. L. & Pol'y 37 (Winter 2010).

This article provides an alternative perspective to the traditional "state-to-state" negotiations that take part in international climate change agreements by looking at this area of the law through a human rights lens. The emphasis under this article's approach is to protect the individual human from adverse affects that come along with environmental changes, rather than using solely a focus on the environment and equity among participating states.

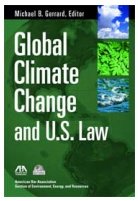
6. William J. Walsh, ***Industry Cries Foul to EPA's Attempt to Regulate GHG Emissions Using the Clean Air Act***, 10 Sustainable Dev. L. & Pol'y 39 (Winter 2010).

This article takes the viewpoint of the regulated industry and analyzes the legal, economic and practical problems with EPA using the Clean Air Act to regulate emissions of greenhouse gases. In doing so, the article gives a good overview of the flurry of action by the EPA over the past two years.

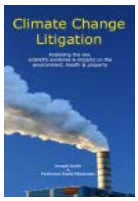
7. Lauren E. Schmidt, ***Recent Developments in Climate Change Law***, 37 Colo. Law. 63 (November 2008).

This article analyzes developments in climate change law through the summer of 2008, which was a short time after the Supreme Court's landmark decision in *Massachusetts v. EPA* and in the midst of intense debate in Congress over the Lieberman-Warner Climate Security Act. The article also analyzes how climate change issues fit within the U.S. foreign policy and contrasts the then-approach of the U.S. from those of European nations.

Books and Publications



Global Climate Change and U.S. Law provides comprehensive coverage of the country's law as it relates to global climate change. After a summary of the factual and scientific background, Part I outlines the international and national legal framework of climate change regulation and associated litigation. Part II describes emerging regional, state and local actions, and includes a 50-state survey. Part III covers issues of concern to corporations, including disclosure, fiduciary duties, insurance, and subsidies. Part IV examines the legal aspects of efforts to reduce greenhouse gases, such as voluntary efforts, emissions trading, and carbon sequestration. Global Climate Change and U.S. Law includes key resource aids, including a glossary of climate related terms; a list of acronyms; extensive endnotes; and a comprehensive index. Available on the ABA's website.



Climate Change Litigation: Analysing the law, scientific evidence & impacts on the environment, health & property (Dr. Joseph Smith & Professor David Shearman)

Written for lawyers, business managers, policy makers, environmentalists and others with an interest in law and sustainability issues, this book provides a detailed overview and analysis of the key legal and scientific issues at the core of climate change litigation. Available on Presidian's website.

Back to Top

Computerized Research

Web-Based Research

1. Google and Google Scholar – Google's advanced web search function allows more targeted searches using key words and date ranges. The Google Scholar advanced search of legal opinions and articles allows you to narrow your search to just reported case opinions and law articles and is searchable by any federal or state jurisdiction. All Google search products are completely free and provide quick and accurate search results.

2. GPO Access - this federal government database contains the United States Code, the Code of Federal Regulations, the Federal Register and legislative histories of federal laws.

3. Fastcase and Loislaw – two low cost options for legal document searches.

4. LexisNexis – a vast search engine which has allows the researcher to focus the search within environmental, energy or related topics. Lexis also has a specific portal for Climate Change and other "emerging issues."

5. Westlaw and WestlawNext – the traditional and latest search engines from West allow the researcher to tailor the search in a number of ways, jump between several different sources with related topics, and focus the search to Environmental and other related directories.

Climate Change Search Terms

Climate Change

Climate Change Skeptics

Climate Gate

Effect of Carbon Dioxide

Endangerment Finding

Enteric Fermentation

Global Warming

Greenhouse Effect

Greenhouse Gas Emission Inventory

Kyoto Protocol

Prevention of Significant Deterioration

Climate Change Websites

Columbia Law School Center for Climate Change, Columbia University Law, http://www.law.columbia.edu/centers/climatechange (last visited April 14, 2011).

Climate Change, U.S. EPA, http://www.epa.gov/climatechange/ (last visited April 16, 2011).

ClimateWire, Energy & Environment News, http://www.eenews.net/cw/ (last visited April 16, 2011).

Global Climate Change: NASA's Eyes on Earth, National Aeronautics and Space Administration, http://climate.nasa.gov/ (last visited April 16, 2011).

Center on Global Climate Change, Pew Research Center, http://www.pewclimate.org/ (last visited April 16, 2011).

United States Global Change Research Program, http://www.globalchange.gov/ (last visited April 16, 2011).

Publications and Data, Intergovernmental Panel on Climate Change, http://www.ipcc.ch/publications_and_data/publications_and_data.shtml (last visited April 16, 2011).

Climate and Energy, World Watch Institute, http://www.worldwatch.org/climate-energy (last visited April 16, 2011).

A Climate Service in NOAA, National Oceanic and Atmospheric Administration, http://www.noaa.gov/climate.html (last visited April 16, 2011).

Global Climate Change, Electric Power Research Institute, http://my.epri.com (last visited April 16, 2011).

How Can You Control Climate Change?, European Commission, http://ec.europa.eu/clima/sites/campaign/index_en.htm (last visited April 16, 2011).

Global Warming 101, Union of Concerned Scientists, http://www.ucsusa.org/global_warming/global_warming_101/ (last visited April 17, 2011).

Back to Top

Interest Groups and Associations

Interest Groups and Associations

Pew Center on Global Climate Change

The Pew Center on Global Climate Change brings together business leaders, policy makers, scientists, and other experts to bring a new approach to a complex and often controversial issue. This approach is purported to be "based on sound science, straight talk, and a belief that we can work together to protect the climate while sustaining economic growth." Some of the most respected and widely-used reports on climate change have come from the Pew Center.

Climate Justice

This is an environmental advocacy organization that specializes in the "enforcement" of law related to climate change. Its general mission is to support legal action against companies and governments it believes is not fulfilling its duty to regulate greenhouse gases or otherwise mitigate climate change. Its website does a fairly good job of tracking recent significant federal court decisions concerning a variety of issues associated with climate change.

Climate Institute

This organization's mission is to "Catalyze innovative and practical solutions for climate change adaptation, mitigation, and climate stabilization, contribute to scientific research and communicate the results of that research in an accurate and comprehensive manner," to "create partnerships among policymakers, scientists, the public and environmental institutions at the local, national and international levels to address the climate challenge more effectively," and to "provide objective and comprehensive information on climate change risks and potential responses." It has less of a focus on the law than Climate Justice and purports to contribute objective information to the climate change discussion.

United Nations World Meteorological Organization

The World Meteorological Organization (WMO) is a specialized agency of the United Nations and is the UN system's authoritative voice on the state and behaviour of the Earth's atmosphere, its interaction with the oceans, the climate it produces and the resulting distribution of water resources. WMO has a membership of 189 Member States and Territories. The WMO regularly puts out studies and publications about climate change from an international perspective.

Friends of the Earth

FOE claims to be "fighting to defend the environment and create a more healthy and just world" and is one of the better known public interest groups to specialize in environmental issues. An increasing emphasis of FOE is to file suits in an attempt to force action on climate change mitigation, and its literature is a good representation of a climate change plaintiff's perspective.

Sierra Club and Environmental Defense Fund

These are two of the most active public interest plaintiffs in environmental lawsuits and have been at the heart of some of the most significant decisions in recent years. Along with FOE, these groups represent a strong voice of environmental advocacy.

RealClimate

This group purports to provide commentary on climate science by working climate scientists for the interested public and journalists. We aim to provide a quick response to developing stories and provide the context sometimes missing in mainstream commentary. The discussion on its website is supposed to be restricted to scientific topics and does not get involved in any political or economic implications of the science.

Al Gore

This guy is probably worthy of his own "organization" title and is a co-creator of An Inconvenient Truth.

Back to Top

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