

CLIMATE INTERVENTION LAW
Spring 2020

Course Number 7397

Section Number 5390

(Satisfies writing requirement: WRS)

University of Houston Law Center

Fall 2020

Prof. Tracy Hester

Class Hours: Monday-Wednesday 5:30 pm to 6:45 pm
No physical classroom - online via Zoom

Office Hours: I'll hold open office hours via Zoom on Tuesdays from 1:30 pm to 4:30 pm. When we can meet safely in person, I can also schedule a time with you in my office at TUII-142.

You can also reach me at 713-743-1152 or tdheste2@central.uh.edu to schedule a visit at any other time.

Course Description:

Climate change poses one of the greatest challenges of our time, but our legal and regulatory systems face enormous difficulties in responding to it. As a result, the consequences of climate change have inexorably grown while global emissions of greenhouse gases from human activity continue to accelerate. To help bridge the gap between increasing emissions and the pace of governmental and private action, the emerging field of climate intervention explores options to directly control or alter the environment in ways to offset or prevent climate change effects. These strategies, so far, have generally fallen into two categories: technologies that reduce the amount of solar radiation that reaches the Earth's surface, and methods that directly remove large amounts of greenhouse gases from the atmosphere. Both of these approaches pose unique challenges to environmental law and climate change regulatory policy.

This class is the first law school class offered in the United States on climate intervention law. We will explore how this nascent field of law will grow, and experiment with different approaches and frameworks that could apply to climate

intervention initiatives under international law and under U.S. and state laws. As part of that process, we will also discuss the growing field of climate change law in general and how it might interact with climate intervention work.

As an outcome of taking this class, you should be able to identify key regulatory issues and liability risks associated with climate intervention efforts and strategies to help manage those risks (including, if needed, halting a project entirely).

The class will use a combination of lectures, class discussions, case studies, in-class exercises and sample problems. Where possible, we'll discuss real-life proposed experiments and demonstration projects, and will reach out to bring key researchers to speak with us where possible.

Course Prerequisites: None. I will provide supplemental material and assistance to anyone who has questions about underlying environmental law doctrines and principles.

Course Materials:

The Law of Climate Engineering, ed. Michael Gerrard and Tracy Hester (2018).

In addition, I'll upload class handouts and supplemental materials to Blackboard, along with video and audio recordings of class lectures and discussions.

If you would like additional background orientation materials on environmental law, I can provide galley proof copies of *Mastering Environmental Law* (a short hornbook aimed at new environmental law practitioners) to students who request one.

Assignments

Our reading assignments will follow the course syllabus, although we may vary a bit in pace and coverage as the semester progresses (i.e., expect changes as we go). Of course, you should read each day's assigned materials in advance and be prepared to discuss them in class.

Class Participation

In general, I will treat you in class the same way that I'd treat you as a new attorney working for me at a law firm. So please be prepared to discuss the

readings assigned for that day as well as to think creatively about how to apply those materials to new situations and hypotheticals. I'll make sure that everyone has a chance to participate in the discussion before the semester's end. You will also have a limited number of opt-outs (no excuses necessary), but you can't get credit for the class unless you attend at least 80% of the sessions.

Assessments and Grading

This class is a seminar class for writing credit, which means you will write a law review style paper that totals at least 10,000 words (including footnotes). You will also review and discuss papers by your classmates. Our opening class sessions will focus on expectations and principles for research and writing, and we will also discuss your choice of a topic within climate intervention law. Part of your class time will include at least one mandatory session with me outside of class (likely via Zoom).

Your grade will result from the following factors:

Class participation (including attendance)	10%
In-class discussion of proposed topic and outline	10%
First draft	10%
Written comments on other student topics	20%
Final paper	50%

Your paper will need to meet the following schedule:

Selection of Tentative Topic	Sept. 2, 2020
Initial detailed outline	Oct. 12, 2020
Final draft of paper	Nov. 18, 2020

This schedule gives you a large block of time to develop your initial outline. Please use this time wisely to develop your topic, including research and reading. The selection of your topic and initial outline will dictate the success of your paper for the semester.

Personal Resources

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-

743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus. Go to http://www.uh.edu/caps/outreach/lets_talk.html .

Discrimination and Sexual Harassment/Misconduct Policy

The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University system's Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here:

<http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d7.pdf>
(antidiscrimination)

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d8.pdf>
(sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource.

Week 1 (Aug. 24, 26)

Introduction to class, overview of article writing and process (WRS)
Overview of climate change science with guest lecturer

Assignments:	Class 1	Gerrard 1-25
	Class 2	Guest lecture by Dr. John Nielson-Gammon

Week 2 (Aug. 31, Sept. 2)

Introduction to climate intervention technologies. **TENTATIVE TOPIC DUE ON WEDNESDAY, SEPT. 2**

Assignment: Gerrard 28-51
Readings on Blackboard

Week 3 (LABOR DAY HOLIDAY – class on Sept. 9 only)

Review of tentative topics and potential class resources. Brief update on current legislative and regulatory activities on climate intervention research.

Assignment: Be prepared to discuss your tentative topic in class

Week 4 (Sept. 14, 16)

Introduction to international climate change law: foundational principles, UN Framework Convention on Climate Change, Kyoto Protocol, Paris Agreement.

Project – large-scale CO₂ removal as compliance strategy for Paris Agreement.

Assignment: Gerrard 57-75, 115-131

Week 5 (Sept. 21, 23)

International climate change law and climate intervention: International Human Rights Law, Convention on Biological Diversity.

Project – field test of marine microbubbles technology.

Assignment: Gerrard 76-114

Week 6 (Sept. 28, 30)

Ocean Engineering – UN Law of the Sea Convention, London Convention/ London Protocol.

Project – marine CO₂ stripping.

Assignment: Gerrard 224-236

Week 7 (Oct. 5, 7)

Polar and glacial engineering, research governance.

Project – Antarctic glacial mooring.

Assignment: Gerrard 269-299
Bodansky

Week 8 (Oct. 12, 14)

Federal Law: Clean Air Act, National Weather Modification Act.

Project – ScopeX

Assignment: Gerrard 160-162, 175-179

**THESIS AND DETAILED OUTLINE DUE BY BEGINNING OF
CLASS ON OCT. 12 (send to tdheste2@central.uh.edu)**

Week 9 (Oct. 19, 21)

Federal Law: Clean Water Act, CERCLA/RCRA.

Project – accelerated weathering and enhanced mineralization in agriculture.

Assignment: Gerrard 179-191

Week 10 (Oct. 26, 28)

Federal Law: Endangered Species Act, National Environmental Policy Act.

Project – Florida coral protection.

Potential guest speaker on Great Barrier Reef interventions

Assignment: Gerrard 162-167, 154-159

Week 11 (Nov. 2, 4)

Tort liability, including transnational litigation.

Project: Tuvalu citizens damages action.

Assignment: Gerrard 236-254

Week 12 (Nov. 9, 11)

State regulation, federalism limits, state weather modification law, and emergency response authorities.

Project: regional heat wave response with marine cloud brightening and localized solar radiation management.

Assignment: Gerrard 167-175

Week 13 (Nov. 16, 18)

Corporate transactions: financial incentives (45Q, LCFS), border adjustment mechanisms, international trade limits, and corporate environment/social/governance measures.

Project: Oxy EOR post-mortem

First draft of paper due to me by 5:00 pm CST by email at tdheste2@central.uh.edu .

I will distribute two papers to each of you for in-depth commentary by Nov. 19. Please make sure that you've dedicated enough time before Monday's class to carefully review the two other papers actively and prepare comments.

Assignment: Posted to Blackboard

Week 14 (Nov. 23, then Thanksgiving holiday break)

Roundtable discussion of all papers. Please be prepared to discuss your paper and think about questions that would help you complete your paper.

Week 15 (Nov. 30, 2)

PRESENTATION OF PAPER TO CLASS with commentary by two other students.