

**SYLLABUS  
ENVIRONMENTAL ISSUES IN ENERGY LAW  
COURSE 439**

**SPRING SEMESTER 2009**

**Tues. Jan. 6**

**Introduction**

This class provides an overview of course requirements and an introduction to the field of energy law. This introduction will include a brief history of the development of energy law during the 20<sup>th</sup> century and an overview of the key policy issues that will influence the development of energy law during the 21<sup>st</sup> century. These issues include energy security, climate change, and economic issues (e.g., impacts on consumer costs and employment, world poverty). Major federal legislative trends also will be discussed.

Required Reading: Thomas L. Friedman, *Hot, Flat, and Crowded: Why We Need a Green Revolution and How It Can Renew America*, 2008, 26-49, 409-12 (hereinafter cited as Friedman Book); International Energy Agency, *IEA Work for the G8 & 2008 Messages*, June 2008, 1-10; Senator Jeff Bingaman, *Address on Energy Priorities for the Next Congress*, Center for Strategic and International Studies, Nov. 17, 2008; *Federal Energy Regulation Matrix*.

Optional Reading: Congressional Research Service, *Energy Independence and Security Act of 2007: A Summary of Major Provisions*, December 21, 2007.

**Tues. Jan. 13**

**Oil and Energy Security**

This class reviews the central role of world oil markets and oil consumption trends in shaping existing and future energy law and policy. The class will provide an overview of: (1) existing federal laws; (2) drivers impacting future laws; and (3) the broad contours of legal and policy options. In addition, provisions governing federal energy emergency authorities and the Strategic Petroleum Reserve also will be discussed. Guest lecture by Dan Gilligan, President, Petroleum Marketers Association, on oil-related issues in the 111<sup>th</sup> Congress.

Required Reading: Securing America's Future, *A National Strategy for Energy Security: Recommendations to the Nation on Reducing U.S. Oil Dependence*, September 2008, 21-31; American

Bar Association, Section on Environment, Energy and Resources, Energy Committees Newsletter, *Energy and Climate Change: Presidential Campaign 2008*, September, 2008, 2-3. (hereinafter cited as Candidate Views); Rocky Mountain Institute (RMI), *Winning the Oil Endgame: Innovation for Profit, Jobs, and Security, Executive Summary*, 2004; Amory Lovins, *Getting Off Oil: Recent Leaps and Next Steps*, RMI Solutions, Spring 2008, 4-7; Senate amendment to H.R. 6, 110th Cong. § 201 and § 202 (2007) (introduced in the Senate on Dec. 12, 2007).

Optional Reading: Bosselman, Rossi, & Weaver, *Energy, Economics and the Environment: Cases and Materials* 1179-1242 (2006) (hereinafter cited as *Bosselman Materials*); Friedman Book, 77-81; Testimony of Anne Korin, Co-Director of the Institute for the Analysis of Global Security, Before the House Committee on Foreign Affairs, May 22, 2008.

**Tues. Jan. 27**

### **Clean Air Act**

This class reviews the pervasive influence of the Clean Air Act (CAA) on energy use in the transportation and electric power sectors. The key issues to be discussed include implementation of health-based ambient air quality standards, regulation of ozone transport and mercury emissions, acid rain control, regulations that protect old power plants from requirements for modern pollution controls (“grandfathering”), and new source review issues. Discussion of command-and-control and market-based regulation. Guest speaker.

Required Reading: John Wittenborn & Eric Waeckerlin, *D.C. Circuit Court of Appeals Rejects EPA Clean Air Interstate Rule*, 38 ELR News and Analysis 10790 (2008); *New Jersey v. EPA*, 517 F.3d 574 (D.C. Cir. 2008).

Optional Reading: *Whitman v. Am. Trucking Ass’n, Inc.*, 531 U.S. 457 (2001); Arnold Reitze, Jr., *Stationary Source Air Pollution Law* (2005). *Envtl. Def. v. Duke Energy Corp.*, 549 U.S. 561 (2007).

**Tues. Feb. 3**

### **Global Climate Change**

This class will focus on the current state of knowledge about global climate change and the international legal response to the problem over the last 20 years. Topics include the Rio Convention, the Kyoto Protocol, and proposals for future international action (post-Kyoto). This session also reviews the

impact of potential regulatory responses to this problem on energy production and use. Problem-solving exercise.

Required Reading: S. Pacala & R. Socolow, *Stabilization Wedges: Solving the Climate Problem for the Next 50 Years with Current Technologies*, 305 *Science* 968 (2004); Kyle W. Danish, *The International Regime*, in *Global Climate Change and U.S. Law* 31 (Michael B. Gerrard ed., 2007); Joseph E. Aldy & Robert N. Stavins, *Designing the Post-Kyoto Climate Regime: Lessons from the Harvard Project on International Climate Agreements*, Executive Summary, xi-xvii (2008).

Optional Reading: Intergovernmental Panel on Climate Change, *Summary for Policy Makers of the Synthesis Report of the IPCC Fourth Assessment Report* (2007); Excerpts from the Kyoto Protocol.

**Tues. Feb. 10**

### **Renewable Energy I**

This class will focus on the factors that drive increased use of renewable energy and the legal framework that governs the utilization of non-hydropower renewable energy sources (*e.g.*, solar energy, wind energy, geothermal energy, and bioenergy). The discussion will review existing federal laws involving renewable energy, other laws outside the energy arena that impact renewable energy (*e.g.*, common law) and innovative renewable energy policies. In addition, the class will discuss proposed laws and policies to spur increased renewable energy development, such as the National Renewable Portfolio Standard. Guest speaker.

Required Reading: Friedman Book, 170-74, 186-90, 207; Ryan Wisser and Galen Barbose, *Renewable Portfolio Standards in the United States: A Status Report with Data Through 2007*, April 2008, 1-2, 6-7; National Renewable Energy Portfolio Standard (RPS) Amendment to H.R. 3221, 110th Cong. (2007).

Optional Reading: Jay Inslee and Bracken Hendricks, *Apollo's Fire: Igniting America's Clean Energy Economy*, 2008.

**Tues. Feb. 17**

### **Renewable Energy II**

This class will continue a discussion of innovative State renewable energy law and discuss issues related to the integration of renewable energy and air quality policies. In addition, legal and regulatory issues related to the use of distributed generation (on-site generation) will be reviewed. Problem-solving exercise.

Required Reading: International Energy Agency, *Deploying Renewables: Principles for Effective Policies, Executive Summary*, September 2008, 15-26; American Wind Energy Association, *Wind Energy Siting Handbook*, 2008, 4-1 to 4-3, 4-33 to 4-35, 4-41 to 4-46; U.S. Department of Energy, *20% Wind by 2030: Increasing Wind Energy's Contribution to U.S. Electricity Supply, Fact Sheet*, May 2008.

**Tues. Feb. 24**

### **Domestic Greenhouse Gas Regulation**

Proposals for domestic regulation of greenhouse gas emissions and the interplay between global climate change policies and the price, availability, and use of fossil fuels will be discussed. The class will review key House and Senate legislative proposals. Problem-solving exercise.

Required Reading: Ian W.H. Parry & William A. Pizer, *Emissions Trading versus CO<sub>2</sub> Taxes versus Standards*, Resources for the Future Background, 2007; *Massachusetts v. EPA*, 549 U.S. 497 (2007); Robert Nordhaus, *New Wine into Old Bottles: the Feasibility of Greenhouse Gas Regulation under the Clean Air Act*, 15 N.Y.U. Envtl. L.J. 53 (2007).

Optional Reading: Robert Nordhaus & Kyle Danish, *Assessing the Options for Designing a Mandatory U.S. Greenhouse Gas Reduction Program*, 32 B.C. Envtl. Aff. L. Rev. 97, 97-149 (2005); *Connecticut v. Am. Elec. Power Co.*, 406 F. Supp. 2d 265 (S.D.N.Y. 2005); S. 10, 109th Cong. § 1612 (2005).

**Tues. Mar. 10**

### **Cars, Climate, and Oil**

This class reviews one of the central questions of energy and environmental policy – how to deal with the automotive sector. Areas covered include fuel economy standards, CO<sub>2</sub> emission standards, biofuels and State CO<sub>2</sub> emission standards. Guest speaker.

Required Reading: Excerpts from *Ctr. for Biological Diversity v. NHTSA*, 508 F.3d 508 (9th Cir. 2007); California State Motor Vehicle Pollution Control Standards; Environmental Protection Agency, Notice of Decision Denying a Waiver of Clean Air Act Preemption, 73 Fed. Reg. 12156, Mar. 6, 2008; Letter from Stephen L. Johnson, EPA, to Governor Arnold Schwarzenegger, State of California, summarizing EISA decision, Dec. 19, 2007.

**Tues. Mar. 17      Electric Power Regulation**

This class examines how utility regulation, the Clean Air Act, and potential greenhouse gas regulation converge on the electric power industry. An overview of public utility regulation will be provided. Policy issues to be reviewed include demand-side management, integrated resource planning, transmission siting, fuel adjustment clauses, the impacts of competitive wholesale power markets, and reforming utility regulation to provide incentives for energy efficiency (“decoupling”). Problem-solving exercise.

Required Reading: Friedman Book, 224-36; U.S. Department of Energy and U.S. EPA, *Executive Summary, National Action Plan for Energy Efficiency* (2006); U.S. Department of Energy, *Benefits of Demand Response in Electricity Markets and Recommendations for Achieving Them: A Report to the United States Congress Pursuant to Section 1252 of the Energy Policy Act of 2005*, February 2006, at v-viii.

Optional Reading: *Energy Law* at 117-136.

**Tues. Mar. 24      Energy Efficiency in Electric Generation, Buildings, and Industry**

This class provides an overview of the legal framework governing energy efficiency in electric generation, buildings, and industry. Relevant provisions of the Energy Policy and Conservation Act of 1975, the Energy Policy Act of 1992, the Energy Policy Act of 2005, and the Energy Independence and Security Act of 2007, will be discussed as well as future legal and policy options. Guest speaker.

Required Reading: Friedman Book, 190-95, 210-11; National Action Plan for Energy Efficiency, *Vision for 2025: Developing a Framework for Change*, ES-1 to ES-5, November 2007; United Nations Foundation, *Executive Summary, Realizing the Potential of Energy Efficiency: Targets, Policies, and Measures for G8 Countries*, 2007; *Natural Resources Defense Council v. Abraham*, 355 F.3d 179 (2d Cir. 2004).

**Tues. Mar. 31      Energy Finance**

This class will provide an overview of project finance as a tool to support the construction of new energy infrastructure. The class will focus on the key role of power purchase agreements and risk

allocation in the financing of energy facilities. Guest lecture by Roger Feldman, Partner, Andrews Kurth, and Co-Chair of the ABA Committee on Carbon and Energy Trading and Finance.

Required Reading: Scott L. Hoffman, *The Law and Business of International Project Finance: A Resource for Government Sponsors, Lenders, Lawyers, and Project Participants*, 3-12, 343-359 (2d ed. 2001); JP Morgan Chase, Citi, and Morgan Stanley, *The Carbon Principles*, 2008.

**Tues. Apr. 7**

### **Nuclear Energy**

This class provides an overview of major laws, legal issues, and ongoing policy debates related to the generation of civilian nuclear power and the disposal of nuclear wastes. The class also will focus on the next generation of nuclear technologies and the risks/benefits of nuclear energy compared to other energy sources. Problem-solving exercise.

Required Reading: Marla Mansfield, *The Prospects for Nuclear Generation*, A.B.A Sec. on Env't, Energy, & Resources - Trends Newsl., Nov./Dec. 2006, 1, 13; Nuclear Energy Institute, *Highlights of Nuclear Energy Provisions in Energy Policy Act of 2005*; *Nuclear Power and Climate Change: Three Perspectives*, A.B.A Sec. on Env't, Energy, & Resources - Trends Newsl, May/June 2008, 1, 10-11.

Optional Reading: Roland Frye, Jr., *The Current "Nuclear Renaissance" in the United States, Its Underlying Reasons, and Its Potential Pitfalls*, 29 ENERGY L.J. 279 (2008).

**Tues. Apr. 14**

### **Technology Policy; Carbon Capture and Sequestration**

This class presents an overview of federal technology policy issues, and focuses in on one particularly difficult challenge: carbon capture and sequestration (CC/S). The discussion of CC/S will cover CO<sub>2</sub> capture technology, as well as property rights, and regulatory and liability issues incident to long-term storage of CO<sub>2</sub>. Problem-solving exercise.

Required Reading: R. Nordhaus, *Restructuring Energy Research Development Demonstration and Early Deployment*, National Commission on Energy Policy (2004); *CCS Reg Project, Interim Report*.

Optional Reading: J. Moore, *The Potential Law of On-Shore Geologic Sequestration of CO<sub>2</sub> Captured from Coal-Fired Power Plants*, 28 Energy L. J. 443 (2007). International Energy Agency, *CO<sub>2</sub> Capture and Storage: A Key Carbon Abatement Option*, October 2008; *WRI Report*.