

## Global Climate Change and U.S. Law by Michael B. Gerrard, Ed.

Erin Overturf

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# BOOK REVIEW

## GLOBAL CLIMATE CHANGE AND U.S. LAW

Michael B. Gerrard, Ed.

Reviewed by Erin Overturf\*

Because the U.S. has not ratified the Kyoto Protocol, many may see the title *Global Climate Change and U.S. Law* as an oxymoron. Yet, despite the political stubbornness of the U.S. in the international arena, the law of climate change in the U.S. is vast and fast-changing. This diverse body of law is thoroughly catalogued in *Global Climate Change and U.S. Law*, edited by Michael B. Gerrard on behalf of the American Bar Association's Section of Environment, Energy, and Resources. This book provides an overview of all legal regimes and instruments which directly regulate or can be used to regulate greenhouse gas emissions and climate change.

This volume serves as a comprehensive desk reference of legal issues related to climate change, which any lawyer or policymaker in the environmental field would find useful and informative. The book provides an outstanding overview of the field, particularly helpful for individuals seeking an introduction to climate change law. Kyle W. Danish's chapter *The International Regime* offers a concise, approachable, nuts-and-bolts introduction to the U.N. Framework Convention on Climate Change and the Kyoto Protocol, while John C. Dernbach's chapter *U.S. Policy* and Johnathan S. Martel and Kerry L. Stelcen's chapter *Clean Air Regulation* detail the directly relevant national climate change regulation.

Recognizing that the U.S. federal policy has largely been centered around inaction, the volume takes a broad look at the regional, state and local laws that have emerged to fill the void. Both David Hodas in *State Initiatives* and J. Kevin Healy in *Local Initiatives* discuss the types of approaches governments have taken and their relative benefits and drawbacks. The volume also contains an invaluable survey of State actions responding to climate change compiled by the Pace Law School Center

for Environmental Studies. This section of the book would be extremely helpful for state and local government officials and environmentalists working to address greenhouse gas emissions at the local level.

Gary S. Guzy's chapter *Insurance and Climate Change* would also be of particular interest to policymakers. This chapter examines the structure of the insurance industry and its response to the increased risk of natural disasters, such as Hurricane Katrina, caused by climate change. The scope and nature of coverage offered by the industry will necessarily define the responsibilities of the public sector for responding to the financial and human costs of climate change, making insurance law an increasingly important field of study for public servants involved in emergency response and prevention.

Dennis Hirsch, Andrew Bergman, and Michael Heintz provide an accessible analysis of carbon trading schemes in their chapter *Emissions Trading—Practical Aspects*. Carbon trading has succeeded in capturing the public imagination more than nearly any other aspect of the field and this chapter clearly explores these technical and,

oftentimes, dauntingly complex programs from a lawyer's perspective. While this meticulous overview is helpful in orienting readers, the volume's real contribution is its thorough, creative compilation of U.S. laws which, although not specifically related to greenhouse gas emissions, may be somehow implicated by climate change. Bradford C. Mank's chapter *Civil Remedies* examines issues that may arise when a private party brings suit against a government or private entity for climate change

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\* Erin Overturf is a J.D. candidate, May 2008, at American University, Washington College of Law.

related injuries. Mank examines difficulties plaintiffs may face in establishing Article III standing and goes on to discuss various case theories for addressing climate change injures, such as the National Environmental Policy Act, the Endangered Species Act, international human rights instruments, and the Alien Tort Claims Act.

However, this volume goes beyond litigation logistics in assessing the potential applicability of other U.S. laws. One particularly interesting example is a discussion by Jeffrey A. Smith and Matthew Morreale of the potential for Federal Trade Regulation oversight of “green” claims made by notoriously environmentally unfriendly industries in the chapter *Disclosure Issues*. While commercial speech may not immediately spring to mind when assessing legal aspects of climate change, it will certainly be interesting to

see how these two fast-changing areas of law will intersect in an age of social marketing.

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to pinpoint a fast-changing area of law, it is difficult for this kind of volume to be fully up-to-date. It is notable that this volume went to press before the groundbreaking Supreme Court decision in *Massachusetts v. EPA*. However, the ABA is compiling updates to the volume which are available online and extend the volume’s usefulness. This publication would be useful for

environmental lawyers, corporate counsel, government officials, policymakers, and anyone else interested in incorporating climate change issues into their existing practice. 



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**For more information**  
**Contact: David Hunter**  
**Phone: 202.274.4415**  
**E-mail: [environmentallaw@wcl.american.edu](mailto:environmentallaw@wcl.american.edu)**

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