

Law 271.6 sec. 1
Science and Regulatory Policy
(Spring 2008)

Units: 2
CCN (2Ls/3Ls): 49795

Instructor: Holly Doremus
Email: hddoremus@ucdavis.edu
Location: 122 Boalt
Time: Wednesdays 9:00-10:50 a.m.

Course Description:

Grading

Your grade will be based on class participation (25%) and a paper (75%). Class participation includes regular attendance, leading the discussion for your assigned session and contributing in other sessions.

The paper should satisfy the law school's writing requirement and ideally will be a good candidate for publication. Students from disciplines other than law may write papers in a format appropriate for their discipline. The last few weeks of the seminar will be devoted to presentation and discussion of the papers.

Paper deadlines

In order to provide the opportunity for feedback and to keep your paper progress on track, there will be several deadlines before the final paper is due. In each case, your paper must reach me by no later than 5 p.m. on the date specified. Please use the "DropBox" tool on the course web page to submit your paper.

February 7	Topic statement and preliminary source list due
March 6	Outline and updated source list due
April 10	First draft due
May 16	Final paper due

Office Hours:

I will hold office hours Wednesdays from 2 to 4 p.m. You are welcome to drop by at other times, but if you want to be sure you find me in and with time to talk it would be a good idea to schedule an appointment. I am happy to respond to questions by e-mail, and make every effort to do so promptly.

Texts:

The readings will be posted on the course web page.

Syllabus

Class 1 – January 16

Setting the stage: Science and Controversy in the Regulatory Process

Readings for class:

1. Alex Berenson, Study Reveals Doubt on Drug for Cholesterol, New York Times, Jan. 15, 2008
2. Andrew Martin, FDA Says Cloned Animals Safe to Eat, New York Times, Jan. 15, 2008
3. U.S. Dept. of the Interior, Office of Inspector General, Report of Investigation, Julie MacDonald, Deputy Assistant Secretary, Fish, Wildlife and Parks (March 2007)
Western Watersheds Project v. U.S. Forest Service (D. Idaho, Dec. 4, 2007)

Class 2 – January 23**Boundaries and the role of science in decisions***Readings for class:*

1. A. Dan Tarlock, Environmental Law: Ethics or Science?, 7 Duke Environmental Law & Policy Forum 193 (1996)
2. Wendy E. Wagner, The “Bad Science” Fiction: Reclaiming the Debate Over the Role of Science in Public Health and Environmental Regulation, 66 Law and Contemporary Problems 63 (2003)
3. Holly Doremus, Science Plays Defense: Natural Resource Management in the Bush Administration, 32 Ecology Law Quarterly 249 (2005)
4. Kristen Carden, Bridging the Divide: The Role of Science in Species Conservation Law, 30 Harv. Envtl. L. Rev. 165 (2006)
5. Andrew A. Rosenberg, Fishing for Certainty, 449 Nature 989 (2007)

Class 3 – January 30**Science, expertise and democracy***Readings for class:*

1. Dan Tarlock, Who Owns Science?, 10 Penn. St. Environmental Law Review 135 (2002)
2. Daniel Sarewitz, How Science Makes Environmental Controversies Worse, 7 Environmental Science and Policy 385 (2004)
3. David Winickoff et al., Adjudicating the GM Food Wars: Science, Risk, and Democracy in World Trade Law, 30 Yale Journal of International Law 81 (2005)

Class 4 – February 6**Transparency and open communication***Readings for class:*

1. Holly Doremus, Using Science in a Political World: The Importance of Transparency in Natural Resource Regulation, in Wendy Wagner and Rena Steinzor, eds., Rescuing Science from Politics: Regulation and the Distortion of Scientific Research (Cambridge Univ. Press 2006).
2. Sheila Jasanoff, Transparency in Public Science: Purposes, Reasons, Limits, 69 Law & Contemporary Problems (Summer) 21 (2006).
3. Scott M. Lassman, Transparency and Innuendo: An Alternative to Reactive Over-Disclosure, 69 Law & Contemporary Problems (Summer) 69 (2006).

Class 5 – February 13**Political interference with decisions***Readings for class:*

1. Review from Week 1: U.S. Dept. of the Interior, Office of Inspector General, Report of Investigation, Julie MacDonald, Deputy Assistant Secretary, Fish, Wildlife and Parks (March 2007)
2. Union of Concerned Scientists, Scientific Integrity in Policymaking: An Investigation into the Bush Administration’s Misuse of Science (March 2004)
3. Union of Concerned Scientists, Scientific Integrity in Policymaking: Further Investigation into the Bush Administration’s Misuse of Science (July 2004)
4. Patricia M. Wald, Analysts and Policymakers: A Confusion of Roles?, 17 Stanford Law & Policy Review 241 (2006)

Class 6 – February 20**Whistleblowing***Readings for class:*

1. Eugene Russo, The Plight of the Whistleblower, The Scientist, Jan. 13, 2005
2. Excerpts from 5 U.S.C. § 2302
3. Eli Kintisch, House OKs Whistleblower Bill, 315 Science 1649 (March 23, 2007)
4. Federal Employee Protection of Disclosures Act, S 274, 110th Congress
5. Whistleblower Protection Enhancement Act, HR 985, 110th Congress

Class 7 – February 27**Limiting consideration of information***Readings for class:*

1. Alan Charles Raul and Julie Zampa Dwyer, “Regulatory Daubert”: A Proposal to Enhance Judicial Review of Agency Science by Incorporating Daubert Principles into Administrative Law, 66 Law & Contemporary Problems (Autumn 2003) 7.
2. Wendy E. Wagner, Importing Daubert to Administrative Agencies through the Information Quality Act, 12 Journal of Law & Policy 589 (2003).
3. Erin Madden, Seeing the Science for the Trees: Employing Daubert Standards to Assess the Adequacy of National Forest Management Under the National Forest Management Act, 18 Journal of Environmental Law and Litigation 321 (2003).

Class 8 – March 5**Peer review and scientific advisory bodies***Readings for class:*

1. Lars Noah, Scientific “Republicanism”: Expert Peer Review and the Quest for Regulatory Deliberation, 49 Emory L. Rev. 1033 (2000)
2. J.B. Ruhl & James Salzman, In Defense of Regulatory Peer Review, 84 Wash. U. L. Rev. 1 (2006)

Class 9 – March 12**Judicial review***Readings for class:*

1. Ethyl Corp. v. EPA, 541 F.2d 1 (D.C. Cir. 1976)
2. Sierra Club v. Marita, 46 F.3d 606 (7th Cir. 1995)
3. Ecology Center v. Austin, 430 F.3d 1057 (9th Cir. 2005)
4. Earth Island Institute v. US Forest Service, 442 F.3d 1147 (9th Cir. 2006) (focus on Parts I and V)

Class 10 – March 19**Adaptive management and structured learning***Readings for class:*

1. Carl J. Walters, Is Adaptive Management Helping to Solve Fisheries Problems?, 36 Ambio 304 (2007).
2. Bernard T. Bormann et al., Adaptive Management of Forest Ecosystems: Did Some Rubber Hit the Road?, 57 BioScience 186 (2007).
3. Alejandro E. Camacho, Can Regulation Evolve? Lessons From a Study in Maladaptive Management, 55 UCLA L. Rev. 293 (2007).
4. Holly Doremus, Precaution, Science, and Learning While Doing in Natural Resource Management, 82 Wash. L. Rev. 547 (2007).

Class 11 – April 2**Dealing with uncertainty***Readings for class:*

1. Helen M. Regan, Mark Colyvan and Mark A. Brugman, A Taxonomy and Treatment of Uncertainty for Ecology and Conservation Biology, 12 Ecological Applications 618 (2002).
2. David E. Adelman, Scientific Activism and Restraint: The Interplay of Statistics, Judgment, and Procedure in Environmental Law, 79 Notre Dame Law Review 497 (2004).
3. James D. Fine and Dave Owen, Technocracy and Democracy: Conflicts Between Models and Participation in Environmental Law and Planning, 56 Hastings Law Journal 901 (2005).

No class – April 9**Student papers****Class 12 – April 16****Student papers****Class 13 – April 23****Student papers**