Science and Regulatory Policy
Law 271.6 / ERG 291
Spring 2010

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Class meetings: Tuesday 2:20 – 4:10
Hearst Field Annex D-33

Office hours: I will hold office hours Wednesdays from 3 to 5 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.

Required Texts: All readings will be posted on the course web page as pdf files or web links.

Grading: Your grade will be based on class participation (40%) and written work (60%). Class participation includes regular attendance, submitting discussion questions for your two assigned sessions and contributing to the discussion.

There are two choices for the written work. You may either write three reaction papers over the course of the term, or you may write a significant research paper.

For the reaction papers, you may choose the readings to which you wish to react. No outside research is expected, but if you are inclined to dig a bit more into some topic or want to put the readings into a larger context I am happy to try to provide ideas for outside reading. Reaction papers should be no longer than 5 pages each, double-spaced, in a 12 point font with normal margins. They should not simply restate the reading. The idea is not to do a book report, but rather to identify and analyze a specific question based on the readings or class discussion, and come to a conclusion. You may find that you agree or disagree with one or more readings, or that you think they miss or elide important points. You may focus on one particular piece or on the full set of readings assigned for any week. You must turn in at least one reaction paper by week 8 of the semester, and all three no later than Thursday, May 13 (the last day of exams). I encourage you to do the reaction papers as close to the relevant discussion as feasible, but I understand that you may want to wait to decide which readings to address and that you may need flexibility in your schedule.
If you choose the research paper option, you should plan to write a paper that will satisfy the law school’s writing requirement. I encourage you to plan a project that will produce a paper suitable for publication. If you choose this option, you may sign up for an additional unit of independent study credit. You will have to meet a series of deadlines before the final paper is due, in order to provide the opportunity for feedback and to keep your paper on track. The deadlines will be posted to the bspace site. The first will be Tuesday, February 2, for submission of an initial topic statement and rough source list. I encourage you to discuss topic ideas with me well before that deadline.

The final paper will be due on the last day of exams, Thursday, May 13. If you are not graduating, there is some flexibility on the final paper. You may potentially take an IP grade and continue work on your paper over the summer and into the fall semester. You will still be expected to meet intermediate deadlines with your best efforts.

All assignments should be turned in through bspace, using the DropBox function. Please use an easy-to-read 12-point font, normal margins (roughly 1” on all sides), and page numbering. Always include your name both on the first page and in the electronic file name. Acceptable formats are pdf, Word, and WordPerfect.

**DISCUSSION TOPICS, READING ASSIGNMENTS, AND DISCUSSION QUESTIONS**

**Jan. 12** Setting the stage: Science and controversy in the regulatory process

Readings:
- President Barack Obama, Inaugural Address, Jan. 20, 2009
- Memorandum for the Heads of Executive Departments and Agencies, March 9, 2009
- Lisa P. Jackson, EPA Administrator, Memo to EPA Employees, Scientific Integrity: Our Compass for Environmental Protection, May 9, 2009
- J. William Hirzy, Scientific Integrity in a Regulatory Context- An Elusive Ideal at EPA, July 9, 2002
- AP, Science Not Faked But Not Pretty, Dec. 12, 2009
- Eli Kintisch, Stolen E-Mails Turn Up Heat on Climate Change Rhetoric, 326 Science 1329 (Dec. 4, 2009)
Discussion questions:
What is science, and scientific information? What do we want and expect of science in policy decisions? What is “the rightful place of science” in those decisions?
Are there special complications when science-based policy decisions are delegated to administrative agencies? In other words, why study the role of science in the regulatory arena as opposed to in other contexts?
What other factors typically enter into regulatory decisions? Would you expect to encounter any special difficulties in incorporating scientific information, as opposed to other factors, into policy decisions? Be more difficult to ensure that science What factors might make it difficult for science to achieve its rightful place?
Would you expect oversight of science-based policy decisions, through political or judicial processes, to be more difficult or require different procedures than oversight of other decisions?

Jan. 19  **Boundaries and the role of science in decisions**

Readings:
EPA, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66496 (Dec. 15, 2009)

Jan. 26  **Science, expertise and democracy**


Feb. 2 Risk assessment

Feb. 9 Transparency and open communication

Feb. 16 Political interference with decisions
U.S. Dept. of the Interior, Office of Inspector General, Report of Investigation, Julie MacDonald, Deputy Assistant Secretary, Fish, Wildlife and Parks (March 2007)
Patricia M. Wald, Analysts and Policymakers: A Confusion of Roles?, 17 Stanford
Holly Doremus, Scientific and Political Integrity in Environmental Policy, 86 Texas Law Review 1601 (2008)

Feb. 23  **Limiting consideration of information**


Eller v. Department of Interior, Data Quality Act Challenge to U.S. Fish and Wildlife Service Documents Pertaining to the Survival and Recovery of the Florida Panther (Puma concolor coryi)

Steve Williams, Director, US Fish and Wildlife Service, Letter to Jeff Ruch, Executive Director of Public Employees for Environmental Responsibility, March 16, 2005

Mar. 2  **Peer review**


Mar. 9  **Scientific advisory bodies**


Katherine L. Jacobs, Samuel N. Luoma, and Kim A. Taylor, CALFED: An Experiment in Science and Decisionmaking, 45(1) Environment 30-41
Kim A. Taylor and Anne Short, Integrating Scientific Knowledge Into Large-Scale Restoration Programs: The CALFED Bay-Delta Program Experience, 12 Environmental Science and Policy 674 (2009)
American Farm Bureau Federation v. Environmental Protection Agency, 559 F.3d 512 (D.C. Cir. 2009)
Letter from CASAC to EPA Administrator (EPA-CASAC-LTR-06-003), Sept. 29, 2006

Mar. 16 Judicial review
Mar. 30 Confronting uncertainty
Apr. 6 Ordering up science
Apr. 13 Effects of politics on the scientific process
Apr. 20 Regulating science