



**SCIENCE  
AND  
ENVIRONMENTAL LAW  
SEMINAR**

SEPTEMBER 12, 2014  
ARENT FOX LLP  
Washington, DC

<http://shopaba.org/ScienceSeminar>

# ABOUT THE SEMINAR

The ABA Section of Environment, Energy, and Resources is pleased to present this seminar which brings together the country's leading practitioners on science and environmental law to engage and challenge practicing environmental litigation, regulatory, and government affairs lawyers on the state of the use of science in environmental law. Seminar participants will advance their knowledge and understanding of the key areas in which law and science intersect in the practice of environmental law.

## FRIDAY - SEPTEMBER 12

### 8:00 A.M. – 9:00 A.M.

#### REGISTRATION AND CONTINENTAL BREAKFAST

### 9:00 A.M. – 9:30 A.M.

#### WELCOME AND OPENING REMARKS

**Martha E. Marrapese**, Planning Chair, Keller and Heckman LLP, Washington, DC

### 9:30 A.M. – 10:15 A.M.

#### DEMYSTIFYING SCIENCE FOR LAWYERS

(Non-CLE)

Using past and current cases, this keynote address will introduce the scientific concepts that influence environmental law and discuss how they inform public health choices in the United States. Scientists and lawyers may define and value scientific evidence quite differently; even the term "scientific method" has a number of meanings. In general, the scientific method involves careful, systematic, and open reasoning about empirical evidence which serves to advance scientific progress or discovery. From his perspective as a former EPA official, practitioner and educator, Dr. Gray will offer commentary on approaches to risk assessment that embrace scientific thinking, the trends that make up the use of science in the contemporary administrative state, and where science is going and what to expect.

#### SPEAKER

**George Gray, Ph.D.**, Professor in the Department of Environmental and Occupational Health and Director of the Center for Risk Science and Public Health, Milken Institute School of Public Health, The George Washington University, Washington, DC

### 10:15 A.M. – 10:30 A.M.

#### NETWORKING BREAK

### 10:30 A.M. – 11:15 A.M.

#### GETTING SCIENTIFIC EVIDENCE INTO COURT

Agency and court decisions put lawyers in the position of having to decide what is scientific

and what is not. How does the law take scientific uncertainty and bias into account? This fast-paced presentation will commence with an overview of Daubert and its progeny, Chevron and its progeny, and recent trends in court rulings and proceed to cover techniques for compelling advocacy in a complex environmental case. Based on decades of courtroom and environmental litigation experience, this session will demonstrate practical tips on how to effectively deal with every phase of litigation, including considerations by plaintiff and defendant before filing a complaint, evaluating the scientific evidence in a case, handling and preserving breathtaking quantities of information, government investigations, preserving evidence, dealing with the press, and assembling evidence and witnesses.

#### SPEAKER

**Anthony G. Hopp**, Edwards Wildman Palmer LLP, Chicago, IL

### 11:15 A.M. – 12:00 P.M.

#### EFFECTIVELY USING SCIENTIFIC EVIDENCE IN THE FEDERAL RULEMAKING PROCESS

In technologically advanced democracies, scientific integrity is essential both for the advancement of science and for its beneficial interaction with the public. While the predominant view treats science and the administrative process as two very different types of endeavors, there are similarities meriting exploration. Regulatory agencies rely on their review of scientific literature to help inform decision making. This session will describe the use of science in the administrative process, including the quality and extent of the scientific information which agencies must use when building the case for regulation. Insights will be offered on the type of scientific information which interested stakeholders may seek to provide during the rulemaking process.

#### SPEAKER

**James W. Conrad, Jr.**, Conrad Law & Policy Counsel, Washington, DC

### 12:00 P.M. – 12:30 P.M.

#### LUNCHEON

**12:30 P.M. – 1:30 P.M.**

### TRENDS IN THE PRESENTATION OF SCIENTIFIC EVIDENCE

The Daubert trilogy refers to the three United States Supreme Court cases finding that Rule 702 of the Federal Rules of Evidence did not incorporate the Frye “general acceptance” test as a basis for assessing the admissibility of scientific expert testimony. This presentation will address the use of expert testimony in cases such as when there are gaps between the evidence relied on by an expert and his conclusion, the abuse-of-discretion standard of review as the proper standard for appellate courts to use in reviewing a trial court’s decision of whether it should admit expert testimony, the judge’s gatekeeping function, and trends and rulings regarding the admissibility of expert witnesses’ testimony during United States federal legal proceedings. As a co-chair of the National Academy of Sciences Judicial Committee on the Development of the Reference Manual on Scientific Evidence, Judge Rothstein will also address this reference in relation to how the courts assess science terms, phrases, theories and rationales presented as evidence.

#### **SPEAKER**

**The Honorable Barbara Rothstein**, U.S. District Court for the District of Columbia, Washington, DC

**1:30 P.M. – 2:15 P.M.**

### THE CONTRIBUTION OF SCIENCE IN TOXIC RISK REGULATION

This panel will examine how scientific integrity and grounding of toxicological risk assessments by government agencies, particularly with respect to data interpretation, provides a more direct and fruitful path to governance. How technical information is interpreted, used, and communicated to the public will be discussed in the context of the regulation of toxic substances, to underscore the need for agencies to communicate science in a straight forward manner.

#### **SPEAKER**

**Rena Steinzor**, Professor of Law, University of Maryland Francis King Carey School of Law, Baltimore, MD

**2:15 P.M. – 3:15 P.M.**

### CLIMATE CHANGE – THE LATEST INTERSECTION OF SCIENCE AND THE LAW

This panel features two of the world’s leading practitioners on Climate Change law and policy, who will examine how science is shaping the pace and progress of domestic regulation and international treaty cooperation on topics such as sea level rise, increased storm intensity

and frequency, and coastal erosion. These practitioners will analyze the laws that are being enacted at the federal and state level to protect populations from potentially devastating climate change impacts and discuss what legal tools are available to the federal government to meet its responsibilities. The session will provide in-depth analysis of the evolving nature of science and the challenges this presents for policy development, regulation, litigation and international cooperation.

#### **SPEAKERS**

**Megan Ceronsky**, Director of Regulatory Policy & Senior Attorney, Climate & Air Program, Environmental Defense Fund, Washington, DC

**Jay Gulledge, Ph.D.**, Director, Environmental Sciences Division, Climate Change Science Institute at Oak Ridge National Laboratory, Oak Ridge, TN

**3:15 P.M. – 3:30 P.M.**

### NETWORKING BREAK

**3:30 P.M. – 4:15 P.M.**

### SCIENCE AND TECHNOLOGY POLICY COORDINATION IN THE OBAMA ADMINISTRATION

This session will explain the current Administration’s position, understanding and implementation of President Obama’s call in his inaugural address for the restoration of science. This speaker will discuss the Office of Science and Technology Policy’s (OSTP’s) administrative guidelines for ensuring “scientific integrity” and the President’s Open Data Initiatives, which intend to open up and improve government data in order to engage innovators, entrepreneurs, and the general public on the use of big data to improve everyday lives and grow the economy.

#### **SPEAKER**

**Jennifer Lee**, Senior Associate General Counsel and Policy Advisor, White House Office of Science and Technology Policy, Washington, DC

**4:15 P.M. – 5:15 P.M.**

### CLOSING RECEPTION

# REGISTRATION INFORMATION

## SEMINAR REGISTRATION FEES

Payment must accompany registration form to be accepted.

Section Member	\$150
ABA Member	\$175
General Attendee	\$200
Gov't, Public Interest, Academic	\$125
Young Lawyer*	\$125
Law Student	\$15

\*Qualifying young lawyers are under 36 years old or admitted to practice for five years or less.

## ADVANCE REGISTRATION

We encourage you to register online at <http://www.shopaba.org/scienceseminar>. If you want to register by mail, visit the seminar website to download a registration form. Please mail the form with your payment to the ABA Section of Environment, Energy, and Resources, Attn.: Program Assistant, 321 N. Clark St., Chicago, IL 60654. The deadline for receipt of registration is Friday, August 29, 2014. After this date, registrations must include an additional \$25 for processing.

## LOCATION AND LODGING

The Science and Environmental Law Seminar will take place at the offices of Arent Fox LLP, 1717 K Street, N.W., Washington, DC 20036. There are several hotels within walking distance including: The Mayflower Renaissance, Sofitel, W Hotel, Washington Marriott, etc.

## SEMINAR COURSE MATERIALS AND REGISTRATION FEE INFORMATION

Course materials and related background information will be provided to attendees online prior to the seminar. You may wish to bring a laptop, netbook, or tablet to view the materials as complimentary wireless internet access will be available. The registration fee covers course materials, breakfast, breaks, lunch and reception on Friday.

## CANCELLATION POLICY

Registrants who are unable to attend the seminar will receive a refund less a \$50 administrative fee if written notice of cancellation is received by Friday, August 29, 2014. Cancellations must be emailed to Julie McCullough at [Julie.McCullough@americanbar.org](mailto:Julie.McCullough@americanbar.org). No refunds will be granted after Friday, August 29, 2014. Registration fees are not transferable to other Section or ABA programs; however, substitutions for the seminar are acceptable. The ABA reserves the right to cancel any program and assumes no responsibility for personal expenses.

## TUITION ASSISTANCE

A limited number of registration fee waivers are available for government employees, public interest lawyers employed with nonprofit organizations, and academics. To apply, send a letter outlining why you are interested in participating in the seminar and the basis for your request of a fee waiver by email to [Julie.McCullough@americanbar.org](mailto:Julie.McCullough@americanbar.org) by Monday, August 18, 2014.

## CLE CREDIT

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, MN, MS, MO, MT, NM, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, VI, WA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs. This transitional program is approved for both newly admitted and experienced attorneys in NY. For more information about CLE accreditation in your state, visit the seminar website or contact Julie McCullough at [Julie.McCullough@americanbar.org](mailto:Julie.McCullough@americanbar.org) or (312) 988-5724.

## AMERICANS WITH DISABILITIES ACT

If any special arrangements are required for a disabled individual to attend this seminar, please contact Julie.McCullough at [Julie.McCullough@americanbar.org](mailto:Julie.McCullough@americanbar.org) or (312) 988-5724 by Friday, August 29, 2014.

## ACHIEVING CARBON NEUTRALITY

Calculated with great care, the Section estimates that the average seminar attendee's participation will generate approximately one metric ton of carbon emissions. Help offset your carbon footprint by adding the cost of a one-ton carbon credit from a verified offset project that will reduce greenhouse gases.

## QUESTIONS? (312) 988-5724

Location: Arent Fox LLP, 1717 K Street, N.W., Washington, DC 20036

**Registration Deadline: Friday, August 29, 2014**