

**UNIVERSITY OF DENVER
STURM COLLEGE OF LAW**

Professor Roberto Corrada
Administrative Law

Spring Semester 2012
April 12, 2012

**Administrative Law Midterm Examination
In-Class Portion**

1. Place your examination number here and at the top right hand corner of your exam response _____. (Return this packet along with your answer.) Do not sign your name or otherwise indicate identification on any part of the examination. Your examination number should be used in every instance where identification is necessary. **THIS EXAMINATION MUST BE COMPLETED SOLELY BY YOU WITHOUT THE AID OR ASSISTANCE OF ANY OTHER PERSON OR PERSONS. ANY VIOLATION OF THIS RULE WILL BE VIEWED AS AN HONOR CODE VIOLATION. IN ANY CASE OF VIOLATION, THE PROFESSOR WILL ARGUE FOR THE STIFFEST PENALTY, POSSIBLY INCLUDING EXPULSION FROM LAW SCHOOL.**

2. **MATERIALS TO BE USED IN ANSWERING EXAM PROBLEMS:**

- 1) Schwartz, Corrada, Brown, Administrative Law (2010, 7th ed.);
- 2) Fox, Understanding Administrative Law (2008, 5th ed.)
- 3) Class Handouts;
- 4) Administrative Procedure Act;
- 5) GEEPS Statute (Wiki) as of 4/11/12;
- 6) Any handwritten or typed outline and class notes.

Any other materials are allowed, but remember that the test concerns materials referred to in Administrative Law class. Access to your computer hard-drive and to the internet through any means is *strictly prohibited* for this examination.



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3. EXAMINATION FORMAT

This portion of the midterm examination is one (1) hour in length. It consists of one (1) short answer essay question worth 33% of the final grade for the midterm. The midterm is worth 25% of the grade for Administrative Law.

4. SPACE LIMIT:

The response for the question **may not exceed 500 words**. Please indicate the word count at the bottom of the response. ***This word limit will be strictly applied by the Professor.*** Be careful to make sure that your response has spaces after punctuation to ensure that words are separately counted. ANY RESPONSE THAT IS LONGER THAN ALLOWED WILL RISK THE POSSIBILITY THAT THE PROFESSOR WILL CHOOSE TO IGNORE THE ENTIRE RESPONSE, RESULTING IN A GRADE OF 0% FOR THE RESPONSE.

5. This examination consists of **3** pages, including this instruction sheet. Be certain you have all the pages before proceeding with the examination.



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PROBLEM

EnWind, Inc. is a start-up wind energy firm that produces giant wind turbines and secures land in the Rocky Mountain West for placement of turbines that produce wind energy. EnWind is one of only five such firms in the western United States, and only one of two that is currently in full operation. EnWind has lucrative contracts with Xcel Energy to supply wind energy and also sells wind energy directly to grid energy producers. In recent years, with attention shifting to alternative energy sources, EnWind's business has been growing steadily. The Wind Energy Act of 2009 governs the production of wind energy in the U.S., and is administered by the Department of Energy (DOE). The Act authorizes the DOE to issue rules and regulations pertaining to the "acquisition, storage and use of wind as an energy resource." Last month, the Department of Energy (DOE) published in the Federal Register new proposed rules for wind farming, allowing a 6 week comment period. The new regulations limit the number of turbines that can be placed on a single tract of land. EnWind is affected by these new regulations since they have quite a few windfarms that have turbine spacing violating the proposed regulation. EnWind believes that the regulations were drafted with the help of one of its competitors, IllWind, that has no actual windfarms yet. One of the DOE Commissioners involved in promulgating the new regulations was on the Board of Directors of IllWind before appointment to the DOE. The Commissioner has said a number of times while in office, "wind energy companies that move quickly, but not carefully, are going to be asking for a heap of federal trouble! EnWind in particular better watch out for me if they know what's good for them. Turbine spacing is a huge issue, and I have committed my entire legal agenda to ensuring proper generator spacing." The cost of relocating turbines is prohibitive. EnWind is pretty sure that the spacing regulations only apply to it, or perhaps one other company, since there are very few wind farms in operation and EnWind has, by far, the most crowded spacing. EnWind is seeking advice about its chances to get the rule rescinded or avoid having it applied to them. What are EnWind's's options? Explain fully.