

EXAM # \_\_\_\_\_

**FINAL EXAM**  
**ENVIRONMENTAL LAW, FALL 2003**  
**CAPITAL UNIVERSITY LAW SCHOOL**  
**Professor Hirsch**

**Professor's Instructions: Read Carefully**

1. At the beginning of this exam you should have the following: (a) this 9-page exam packet; (b) a scantron form sheet for the multiple choice questions; (c) a #2 pencil to mark the scantron sheet and a pen (or computer) for writing the narrative portions of the exam; (d) answer books (unless you are taking the exam on a computer).
2. ***Please write your exam number on the front of your envelope, the upper right hand corner of your exam packet and on each of your answer books.***
3. ***Please fill in the identifying information on your scantron sheet.***
4. This is a three-hour (3:00) examination. It consists of a multiple choice section and two essays. I recommend that you spend 60 minutes on the multiple choice section, 70 minutes on Essay I, and 50 minutes on Essay II. Points will be allocated roughly in proportion to these recommended time allocations. Manage your time wisely. Make sure you reserve sufficient time to answer all parts of the exam fully.
5. Read each multiple choice question carefully, as each may ask you to perform a different task (e.g. one may ask you to choose the "most helpful" argument; the next, the "least helpful.") The multiple choice questions are to be answered only on the multiple choice scantron answer sheet (this goes even for those taking the exam on computer). Mark your answers on the scantron form by filling in the space for the letter that corresponds to the best answer for each question. If you erase, do so thoroughly. Otherwise the computer may grade your response incorrectly. Answers written on the exam packet itself will not be considered.
6. Write all your narrative answers on the colored answer books (unless you are taking the exam on computer). Begin each essay with a new answer book. If you write more than one answer book for a given essay, number the books sequentially (e.g. Essay I, book 1; Essay I, book 2; etc.) Answers written on the exam packet itself will not be considered.
7. ***At the conclusion of the exam, please insert your exam packet, answer books, and scantron sheet into the envelope. Then place the envelope in the box at the front of the examination room. You may not make a copy of or otherwise reproduce the exam packet***

## MULTIPLE CHOICE

(60 minutes)

1. From 1960-1975, dozens of companies sent thousands of barrels of waste to the Yucky Landfill. In 1975, there was a fire at the site and many of the labels on the drums were burned off. In 1998, the Landfill was designated as a Superfund site. Recently, several PRP's at the Yucky Landfill Superfund site have sued Chemco, a chemical manufacturer, for contribution. At trial, they have proven that Chemco sent hazardous substances to the site in drums, and have identified 57 drums as positively belonging to Chemco although they believe that it sent far more drums than this. The PRP's have also shown that hazardous substances like those sent by Chemco are present at the site. Based on these facts, Chemco has asked the court to assign it liability only for the cost of cleaning up the 57 drums, and to divide its liability off from that of the other PRPs. Which of the following is the **most likely outcome** of Chemco's motion:
  - A. Chemco will win because the PRPs have only shown that Chemco sent 57 drums to the site and should not be able to hold it liable for anything more than this.
  - B. Chemco will win because it is not jointly and severally liable for the cost of cleaning up the site.
  - C. Chemco will lose because the amount to be divided is the cost of the harm to the environment, not the clean-up cost.
  - D. Chemco will lose because it may have sent more than 57 drums to the site, and Chemco has not proven otherwise.
  
2. The Clean Water Act requires the EPA to establish effluent limitations for categories of point sources and to issue National Pollutant Discharge Elimination System (NPDES) permits to each such source. There are hundreds of thousands of point sources and EPA has found it difficult to carry out this task. In response to this problem, EPA is **not authorized to**:
  - A. Issue general permits to all sources in a given category.
  - B. Issue area permits to all sources in a given area.
  - C. Exempt from the NPDES permitting requirement all sources in a given category.
  - D. EPA is authorized to take any of the above actions.

3. In reviewing an agency's compliance with NEPA, governing law requires courts to
  - A. Conduct a searching, substantive review of the agency's consideration of environmental impacts and alternatives.
  - B. Conduct a "hard look" review of the agency's consideration of environmental impacts, but a more lenient review of its consideration of alternatives.
  - C. Make sure that the agency drafts an environmental impact statement for every action that it takes.
  - D. Strictly review the agency's compliance with procedural requirements, but defer to the agency on matters of substance.
  
4. Where a state adopts, as part of its SIP, regulations that are neither economically nor technically feasible for facilities in that state to comply with, the U.S. EPA is authorized to:
  - A. Disapprove the SIP on these grounds.
  - B. Require the state to revise the SIP to the point that its requirements are economically feasible to comply with.
  - C. Require the state to revise the SIP to the point that its requirements are economically and technically feasible to comply with.
  - D. Require the state to include in its SIP those specific pollution control measures that U.S. EPA believes will most effectively bring the state into compliance with the NAAQS.
  - E. None of the above accurately describes EPA's authority in this situation.

5. For many years, the owners of Lazyco ran an inefficient business. They did not work hard enough at improving or marketing their products. They also took the path of least resistance when it came to disposing of their hazardous waste, choosing to dispose of the drummed waste in a pit on their own property rather than to pay for proper disposal. The drums eventually rusted and hazardous waste started to leak out onto the property. Some time later, business became so bad that the owners simply abandoned the property and took off for Mexico. Townsville, the locality within which Lazyco was located, became the owner of the Lazyco property through a foreclosure proceeding for nonpayment of taxes. It has not yet used the property for any purpose. Recently, the former Lazyco property was deemed a Superfund site. **Based only on the facts above, Townsville's strongest argument for avoiding CERCLA liability is:**
- A. Townsville is not and has never been an "owner or operator" of the site.
  - B. Townsville may be an owner of the site, but it has never been an operator of the site.
  - C. Townsville has merely been a passive owner of the site and has never actively contributed to the waste disposal.
  - D. At the time that it gained title to the property, Townsville did not know that Lazyco had disposed of hazardous substances on the property.
  - E. None of the above are strong arguments for Townsville.
6. Which of the following would not constitute a "discharge of a pollutant" under section 301 of the Clean Water Act:
- A. Using a pipe to carry water pollutants from a factory to a narrow stream that is too small for boats to travel on.
  - B. Employing a lab technician to carry individual buckets of liquid toxic chemicals out of a facility and dump them into a stream.
  - C. Using a conveyor belt to carry pollutants in the form of solid waste from a facility and deposit it into a river.
  - D. All of the above would constitute the "discharge of a pollutant" under section 301 of the Clean Water Act.

7. The “God Squad” is:
- A. A hit television show popular in the 1970s.
  - B. A body of federal, state and local officials that determines which endangered species are entitled to protection.
  - C. A group of Fish and Wildlife Service officials that reviews actions of federal agencies to determine their biological consequences.
  - D. A group of Cabinet-level federal officials and at least one state official who can allow federal actions to proceed even where they will jeopardize an endangered species.
  - E. A group of environmentalists, government officials and industry representatives, appointed by the President, that determines whether endangered species shall live or die.
8. Childco is a wholly-owned subsidiary of Parentco. Childco sent hazardous substances to Smelly Landfill, a Superfund site, and is liable as a responsible party under CERCLA. The other PRP’s have brought suit against Parentco, alleging that it is liable as a parent corporation. In prosecuting their lawsuit against Parentco, it would be **least helpful to the PRP’s** to be able to prove that:
- A. Parentco’s employees were physically involved in Childco’s waste disposal practices.
  - B. Parentco went beyond the corporate norms of parent behavior in supervising the activities of its subsidiary, Childco.
  - C. In establishing Childco as a wholly-owned subsidiary, Parentco used the corporate form for wrongful or fraudulent purposes.
  - D. Parentco closely monitored Childco’s performance and budget decisions.

9. Hazco's industrial process generates Waste A and Waste B, both of which are solid wastes. Waste A is listed as a RCRA hazardous waste. Waste B exhibits the toxicity characteristic as defined under RCRA. Before discarding Waste A and Waste B, Hazco separately mixes each of them with another solid waste, Waste C. It then separately discards these mixtures. Based only on the above facts, which of the following is **not** positively identifiable as a RCRA "hazardous waste"?
- A. Waste B.
  - B. The mixture consisting of Waste A and Waste C.
  - C. The mixture consisting of Waste B and Waste C.
  - D. All of the above can positively be identified as RCRA hazardous wastes.
10. Jones owned an abandoned mine in the hills near the Raging River. He decided make some extra cash by allowing companies to dump liquid industrial waste into the mine. Company A's production process generated a liquid waste that contained mercury, a highly toxic CERCLA hazardous substance. Company A paid Jones a fee and poured a million gallons of its liquid waste into the old mine. Company B's process generated in a liquid waste that was largely water although it contained traces of a single hazardous substance, cadmium. Company B paid Jones a fee and poured 1000 gallons of its liquid waste into the mine. EPA has become concerned about the liquid waste stored in Jones's old mine. Acting on a tip from some locals, it has discovered a very thin crack that is allowing small amounts of the liquid waste to leak from the mine into the Raging River. It has identified small amounts of mercury in the river. Assuming that the mine is listed as a Superfund site, and based only on the above facts, which of the following **most accurately describes Company B's position** under CERCLA:
- A. Company B will likely be liable under CERCLA.
  - B. Company B will likely be liable under CERCLA if cadmium can be identified at the Superfund site.
  - C. Company B will likely be liable under CERCLA if cadmium can be identified in the Raging River.
  - D. Company B will likely not be liable under CERCLA because only small amounts of liquid waste are being released into the river and the great majority of that waste belongs to Company A.

11. In establishing primary National Ambient Air Quality Standards for criteria pollutants, the EPA is *not authorized* to do which of the following:
- A. Consider the adverse health effects on particularly sensitive populations such as the elderly, where the majority of citizens would experience no health effects at all.
  - B. Consider the economic cost to regulated entities of achieving the standard that EPA sets.
  - C. Consider debatable health effects that have not yet been scientifically proven to be harmful.
  - D. Set a standard that goes beyond the minimum necessary to protect the public health.
  - E. EPA is authorized to do all of the above.
12. Trashco has four different waste streams that it discards from its facility. The first of these is a gas that Trashco seals in air-tight containers before discarding. The second is a liquid waste that Trashco hauls off to a landfill in sealed barrels. The third is a toxic gas that Trashco emits through its smokestack. The fourth is a liquid waste that an individual worker occasionally carries out of the facility in buckets and pours onto the ground behind the facility. Which of these waste streams would not qualify as a RCRA "solid waste"? (For the purposes of this question, assume that none of these waste streams are regulated under a Clean Water Act NPDES permit.)
- A. The gas in the air-tight containers.
  - B. The liquid waste discarded in sealed barrels.
  - C. The toxic gas emitted through the smokestack.
  - D. The liquid waste carried out in buckets and poured onto the ground behind the facility.
  - E. None of the above would qualify as a "solid waste" under RCRA.

**ESSAY 1**  
**(70 minutes)**

Best Battery Co. manufactures automobile batteries at its Junction, Colorado facility. The batteries contain parts made out of lead. The facility sits atop a hill overlooking the Rushing River, a splendid location that offers scenic views of the river and surrounding countryside. Best Battery's manufacturing process generates a sludge that contains lead (a toxic substance), oil and a variety of other materials. In an approach that is unique in its industry, Best Battery four years ago began adding water to the sludge and then letting it sit for a month in a large surface impoundment constructed out of dirt and clay on the facility grounds. This practice allows the lead to settle to the bottom of the solution, and the lighter materials (oil, water, etc.) to separate out and rise to the top. After the month has passed, Best Battery digs the lead out from the bottom of the impoundment and reclaims it. It uses the reclaimed lead in its battery manufacturing process.

Two weeks ago, the area in which the facility is located experienced a period of extraordinarily heavy rains, the like of which generally occurs only once every five to ten years. The incessant rains caused Best Battery's surface impoundment to become fuller than it ever had before. After a particularly intense rain, the retaining wall of the impoundment cracked open. Most of the water and sludge flowed through the crack and was released directly downhill into the Rushing River. Best Battery soon restored the wall to its original condition, but the damage had been done. In the days that followed, government officials measured significantly elevated levels of lead in the river downstream of the Best Battery facility. They swiftly imposed a swimming and fishing advisory that prohibited these activities on the river for four miles downstream of the plant. Best Battery has never obtained a Resource Conservation Recovery Act (RCRA) or Clean Water Act (CWA) permit for its impoundment.

*You are an attorney for the Colorado Department of Environmental Protection (CDEP). Colorado exercises delegated authority from U.S. EPA to administer and enforce the RCRA and CWA permitting programs. Your supervisor wants to know whether Best Battery violated either of these permitting requirements by failing to obtain a permit for its surface impoundment. Write an objective memo to your supervisor in which you evaluate the potential RCRA and CWA violations. Be sure to discuss these issues fully, providing both the arguments for and against a possible violation before reaching a final conclusion. If you need more facts to inform your discussion, identify the facts that you need. For the purposes of this memo, assume that all cases we read this semester are binding law in the jurisdiction where the release occurred.*



**ESSAY 2**  
**(50 minutes)**

We began the semester by examining four approaches to setting national environmental goals. We then turned to regulatory strategies for achieving these goals, and examined five such strategies. Choose two of the approaches to setting environmental goals, and two of the strategies for achieving these goals. Discuss the strengths and weaknesses of each approach and strategy you have chosen. Where helpful, illustrate your discussion with examples from cases that we read or other materials from the course.