

EXAM # _____

FINAL EXAM
ENVIRONMENTAL LAW, FALL 2000
CAPITAL UNIVERSITY LAW SCHOOL
Professor Hirsch

Professor's Instructions: Read Carefully

- 1. Please write your exam number on the front of your envelope, the upper right hand corner of this exam packet and on each of your answer books.*
2. This is a closed-book exam. The only material to which you may refer during the exam is your statute book and any notes that you may have written in the margins of that book.
3. This is a three-hour examination. It consists of four essay questions. I recommend that you spend 40 minutes on Question I, 40 minutes on Question II, 30 minutes on Question III, and 70 minutes on Question IV. **Points will be allocated in proportion to these recommended time allocations.** Manage your time wisely. Be sure to reserve sufficient time to answer all parts of the exam fully.
4. Write all your answers in the answer books. Answers written on the exam packet itself will not be considered.
- 5. At the conclusion of the exam, please insert your exam packet and answer books 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.*

Question I
(40 Minutes)

A semiconductor manufacturer generates wastewater containing toxic metals including small amounts of copper, cadmium and lead. As is typical in the industry, the manufacturer stores the wastewater in an outdoor settling pond for two years during which time the solids, including the toxic metals, settle out of the wastewater and produce “sludge.” After the two year settling period the manufacturer intends to process the sludge, reclaim the metals that are in it and reuse these metals in the manufacturing process. The settling pond is near a river. In periods of heavy rains there is a risk that the settling pond may overflow and that some of the sludge may be released into the river. *Is the sludge a RCRA “solid waste” during the time that it is in the settling pond? In answering this question, you can apply any relevant statutory provisions, cases and/or regulations that we covered. If you need any additional information to make this legal determination identify the additional facts that you need. Explain your analysis fully.*

Question II
(40 Minutes)

Consider the same settling pond at the semiconductor manufacturing operation described in Question I. Assume that, during a storm, the settling pond overflowed at the lowest section of its retaining wall and released 1000 gallons of wastewater and sludge into the nearby river. *Did this constitute a violation of the Clean Water Act for discharging a pollutant into the river without a National Pollutant Discharge Elimination System (NPDES) permit? Why or why not? In answering this question, you can apply any relevant statutory provisions, cases and/or regulations that we covered. If you need any additional information to make this legal determination identify the additional facts that you need. Explain your analysis fully.*

Question III
(30 Minutes)

In studying the major federal environmental statutes we have identified both the traditional programs created under these statutes and the newer, “cutting-edge” strategies that agencies are beginning to implement. These newer approaches include: the Watershed Effluent Trading Program under the Clean Water Act; the Sulfur Dioxide Emissions Trading Program under Title IV of the Clean Air Act; the Hazardous Waste Identification Rule (HWIR) under RCRA; the Brownfields Program under CERCLA; and the Habitat Conservation Program under the Endangered Species Act. *Choose one of these newer strategies, then describe: (1) how the new strategy works; (2) how it differs from the traditional program; and (3) how it is supposed to improve upon the traditional approach (i.e. identify the problem with the traditional program that the new strategy is supposed to address, and how it goes about addressing that problem).*

Question IV
(70 minutes)

In the early 1940's, **Chemco** manufactured and sold industrial chemicals. In addition to the many useful chemicals that it produced, Chemco's manufacturing process also generated a by-product known as Chemical Z for which there was no known use. Having no market for Chemical Z, Chemco simply stored its growing inventory of the by-product in large tanks and even considered discarding it.

In 1948, Professor Smart E. Pants, a zany chemistry professor, discovered that by running a high voltage of electricity through Chemical Z he could create a new chemical, Chemical X, that had many industrial applications. Professor Pants founded a company, **Renewco**, for this purpose. Renewco purchased a "greenfield" plot of land and built its own facility there (the Renewco Plant Site). It then purchased electrical equipment, including electrical transformers that contained PCBs, from **Electrico**, which it installed at its plant. Finally, it purchased large amounts of Chemical Z from Chemco for \$.01/gallon. In 1949, Renewco began the process of turning Chemical Z into Chemical X, which it sold on a national market at a substantial profit.

Renewco exceeded the prevailing industry standards for care in handling chemicals. Nonetheless, during the course of handling Chemicals Z and X, Renewco inevitably spilled some of these substances onto the ground. Representatives of Chemco, who occasionally visited the Renewco Plant Site, witnessed some of these spills. Chemical Z and Chemical X were added to the list of CERCLA hazardous substances in 1983.

In 1959, Renewco was purchased by **Mega Corporation** and became a wholly-owned subsidiary of that company. Renewco operated independently of its parent, Mega Corporation. However, two members of the Mega Corp. Board of Directors sat on Renewco's Board and, in that capacity, were able to closely monitor the subsidiary's operations. Such an arrangement is standard practice among parent and subsidiary corporations.

Renewco continued its production of Chemical X until early 1972, at which time the market for Chemical X dried up and the company moved into other businesses. In 1973, Renewco tore down the buildings and equipment at its original plant site and sold most of this material for scrap. However, the scrap dealer would not take the electrical transformers and so Renewco disposed of them in a garbage pit on the property. Over time, some of the transformers cracked and leaked PCBs (a CERCLA hazardous substance) into the pit.

In 1974, Renewco sold its former plant site to **Real Estate Investors (REI)**. REI held the land for a year as an investment. REI carried out no activities on the property.

In 1975, REI sold the former Renewco Plant Site to **Toolco**, a manufacturer of farming equipment. Toolco used the property as a dumping ground for its own waste products, including bits of scrap metal and hundreds of barrels of used solvent (both of which are

CERCLA hazardous substances). It employed **Moveco**, a waste hauler, to transport the waste materials from the Toolco plant to the former Renewco Plant Site, which it renamed the Toolco Landfill. Moveco deposited all such trash at the Toolco Landfill, as instructed by Toolco.

In 1985, Toolco developed other waste disposal options and no longer needed the Landfill. It buried all the visible trash and barrels at the Landfill beneath a thick layer of soil and planted grass as a ground cover. In 1986 it sold the property to **Hole in One Golf Co.** which turned it into a private golf course. At the time of the purchase Hole in One had no knowledge of the hazardous substances on the property, was relatively unsophisticated on environmental matters and did not think to inquire about past waste disposal practices at the site.

In 1989, the Hole in One Golf Co. became short on cash and was unable to pay its taxes. **The City of Columbo** gained title to the golf course (formerly the Toolco Landfill and, before that, the Renewco Plant Site) due to this tax delinquency. The City presently owns the property and operates a public golf course there.

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In January, 1993, the EPA was informed that numerous people living near the Renewco/Toolco Site (now a public golf course) were complaining of nausea and other symptoms. The agency carried out a preliminary investigation which revealed that the wells in the area were heavily contaminated with chemicals that were leaching into the groundwater from the Site. Specifically, the EPA found that Chemical Z, Chemical X, PCBs, metals, and solvents (all CERCLA hazardous substances) were present at the Site, had entered the groundwater and were migrating to the nearby wells. The EPA placed the Site on the National Priorities List, cleaned it up using monies from the Superfund, and brought an action against Toolco seeking reimbursement. Toolco settled with the EPA for \$ 20 million.

Toolco has just hired you as its outside environmental counsel. It wants you to help it recover as much as possible of the \$20 million from other parties that are liable under CERCLA. Write a memo to the general counsel of Toolco in which you discuss Toolco's chances of recovering against each of the following parties: (1) Renewco; (2) Mega Corporation; (3) Chemco; (4) Electrico; (5) Real Estate Investors; (6) Moveco; (7) the Hole in One Golf Co.; and (8) the City of Columbo. Assume that all of these entities still exist, and that all the CERCLA cases that you were assigned in the Percival, Miller casebook are binding authority in this jurisdiction. Since this is a memo to a client, you should write in an "objective" fashion – i.e. identifying both those arguments that favor, and those that run counter to, your client's position. However, you should be sure to reach a conclusion with respect to the potential liability of each of the parties Toolco wants to sue.