

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

**FINAL EXAM**  
**ENVIRONMENTAL LAW, FALL 2002**  
**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, 75 minutes on Essay I, and 45 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 QUESTIONS

(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 millions 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. 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.
  
4. 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.
  
5. 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.
6. 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.
7. 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.

8. 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 in 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.
9. 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.

10. 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**  
**(75 minutes)**

In Southern Louisiana, near the Gulf of Mexico, there are some large pine forests. The federal government owns a portion of these forest lands, and the rest are in private hands. The pine forests perform important ecological functions. They are also a valuable source of timber. The Crescent River, one of the nation's "wild and scenic rivers," runs through the pine forest area before it empties out, several miles further on, into the Gulf. At the mouth of the River (where it meets the Gulf) are hundreds of acres of wetlands, teeming with animal and plant life. These wetlands are an important stopping point for migratory birds making their way North in the Spring. Many fly all the way from Southern Mexico or Central America and are low on nutrients and energy by the time that they reach the Louisiana coast. The wetlands provide an important feeding and sheltering spot for these birds. The Speckled Egret, an endangered species, is among the birds that use the coastal wetlands in this way. Without the wetlands, the Speckled Egret would find it impossible to complete its annual journey North and would likely become extinct. Under Section 4 of the Endangered Species Act, the Secretary of the Interior has designated the coastal wetlands at the mouth of the Crescent as "critical habitat" for the Speckled Egret.

On August 1, 2002, the U.S. Forest Service began the construction of a dirt road into one of the largest federally-owned tracts of pine forest in the region, an area that had previously not been accessible to vehicles. The purpose of the road is to allow logging companies to transport timber out of the forest, although no logging has begun yet on this land. As of the present (December 11, 2002), the road is 90 percent complete and the Forest Service has spent \$250,000 on the project. After the road is finished, the Forest Service anticipates issuing permits to several private logging companies to take timber from the federally-owned land. No such permits have been issued as of yet. Without the road, the logging companies would have no way of removing any timber that they cut. While logging operations have not yet begun on the federal lands, they do already exist on some of the neighboring, privately-held forest lands.

The Crawfish Alliance, a local environmental group, is concerned about the environmental impacts of the road and the planned logging permits. The Louisiana coast gets a lot of rain. The pine forests soak up much of this precipitation. If the forests are substantially reduced in size the Alliance believes that the rains will cause massive soil erosion into the Crescent River and that the River will, in turn, carry the soil down to the coastal wetlands. When wetlands get too filled up with soil they lose the characteristics of a wetland and no longer serve as an effective resting and feeding spot for migratory birds. The Alliance has already seen logging on privately-owned lands begin to create this problem. Private landowners have built dirt roads and cut down large areas of trees. These activities have contributed to soil erosion into the Crescent River. The wetlands are beginning to fill up with soil and have shrunk by 25 percent over the past fifteen years. If this keeps up, the Alliance believes that logging in the area could spell the end for the coastal wetlands and for the Speckled Egret.

The Crawfish Alliance raised these issues with the Forest Service in letter dated July 1, 2002, a month before the Service began construction of the road. The letter identified the presence of the endangered Speckled Egret, stated that the road and associated logging would likely destroy the bird's critical habitat, and urged the Forest Service to consult with the Fish and Wildlife Service as to the protection of this species. The Forest Service responded by issuing a five-page "environmental report" dated October 1, 2002. The report focuses only on soil erosion from the road (the Service takes the position that the logging permits are only hypothetical at this point, and so need not be considered). While the report examines the road's potential effect on the environment, it considers no alternatives to the road-building project. The report concludes that the construction of the road will make only a minimal contribution to the soil erosion problem and will not, in and of itself, substantially impact the coastal wetlands. The Forest Service has declined to consult with the Fish and Wildlife Service, saying that it is already aware of the presence of endangered species in the affected area and so has no need to seek such information from another agency.

*You are the lawyer for the Crawfish Alliance. The Alliance's Board has decided upon legal action to protect the coastal wetlands and Speckled Egret from the threat of logging and soil erosion. In particular, the Alliance would like to bring legal action (1) against the Forest Service to stop the completion of the road and to prevent the issuance of logging permits; and (2) against private landowners in the area who are carrying out road building and logging on their lands and contributing to the soil erosion and wetlands destruction problem. Write a memo to the Board in which you set out the various legal claims that the Alliance might bring against the Forest Service, and those that it might bring against the private landowners, either now or in the near future. Describe and analyze the arguments that the Alliance might make and the remedies that it might seek. The Board has provided you with the attached NEPA regulations and you can make use of them if you find them to be relevant. The Board has instructed you not to address any claims under the Clean Water Act or under the Migratory Bird Treaty or other international obligations, since these issues are being covered by other lawyers. It has further told you that you need not begin your memo with a statement of facts.*

**ESSAY 2**  
**(45 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 six 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.