

Schraff
Capital University Law School
Environmental Law
Spring Semester, 1995

Final Examination

Instructions: You have two hours to complete this examination. Each question counts for fifty percent (50%) of your final grade. Answer each part of both questions. Good Luck!!

Question No. 1. Steve Miller is the proprietor of Miller's BP Gas Station and Carryout, which is located on South High Street, in German Village. One morning, a BP gasoline tank truck arrives to refill the underground storage tanks at Miller's BP. The truck operator pumps 10,000 gallons of gasoline into the underground tanks, completely filling the tanks. When Miller receives the invoice from the truck operator, he is confused because his inventory records indicate that he has sold only 6,000 gallons of gas from the tanks. Miller is unaware that one of the tanks has sprung a leak, and that 4,000 gallons of gasoline have escaped from the tank.

A few weeks later, several German Village residents begin to notice a "gasoline" or "petroleum" odor, which appears to be coming from storm sewers in the German Village area. The residents complain that the odor is causing discomfort and dizziness to several of the residents who reside near open sewer grates. A fisherman on the Scioto-River just south of German village also notices an oil or gasoline sheen on the surface of the water in the River, immediately downstream from a storm sewer discharging untreated storm-water into the River.

After several complaints are lodged with Ohio EPA, an Ohio EPA inspector traces the gasoline in the sewer lines to the leak in Miller's underground storage tank. The location of the leak is adjacent to a large crack in a storm sewer which was buried next to the underground gasoline tank, allowing the gasoline to enter the sewer line from the tank leak. He brings this information to the Ohio Attorney General's Office and requests that the Attorney General prosecute Miller's BP Gas Station and Carryout for violations of environmental laws. The case is assigned to you as an Assistant Attorney General in the Environmental Enforcement Section. When you contact Miller's attorney, the attorney takes pains to point out that Miller had no actual knowledge of a leak and did not intend that the gasoline enter the storm sewer. "That gas was worth a lot of money," the attorney says. "There's no way Steve wanted that stuff to wind up in the sewer!"

A. What laws, if any, has Miller's BP Gas Station and Carryout violated? Is Miller's knowledge of the gasoline leak (or lack thereof) a defense to any violation?

B. If the gasoline had entered a sanitary sewer (instead of a storm sewer) and had disrupted wastewater treatment operations at the City's publicly owned treatment works, would Miller have violated any federal environmental law? If so, what legal provision was violated?

Question No. 2. K.C. Schluebee is a prominent developer of real estate in the Columbus, Ohio area. She owns and leases several large warehouses on the West side of Columbus to various businesses. In 1992, Schluebee leases 100,000 square feet of space to Metal Parts, Inc., a company which manufactures metal parts for the automobile industry. In early March, 1995, Metal Parts, Inc. encounters significant financial problems and ceases paying rent to Schluebee. Before Schluebee can initiate eviction proceedings, Metal Parts ceases to do business and leaves the premises in mid-March. However, Metal Parts officials leave more than 200 drums of paint and cleaning solvents scattered throughout the premises. The solvents include methylene chloride and acetone, both of which are designated by the United States Environmental Protection Agency as "hazardous substances" and "hazardous wastes." Some of the 200+ drums are left outdoors in the back of the warehouse. The drums are rusted and punctured and have leaked paint and solvents onto the ground.

Schluebee is unaware of the condition of the warehouse until she visits the property in May, 1995 more than two months after Metal Parts, Inc. has left. As she pulls into the parking lot of the warehouse, Schluebee is confronted by representatives of USEPA, who are responding to complaints by neighboring businesses that toxic wastes are lying around on the premises. Schluebee explains to the USEPA that Metal Parts abandoned the warehouse two months earlier. The whereabouts of the Metals Parts officials are unknown. USEPA then insists that Schluebee immediately clean up the drums and leakage. Schluebee calls you as her attorney and requests advice.

A. Can USEPA require Schluebee to clean up the drums? Under what laws?

B. Schluebee points out that the lease was entered into between Metal Parts and Schluebee Property Management, Inc., a closely held corporation whose only shareholder and officer is Schluebee and whose only asset is the warehouse. Schluebee has learned that the cleanup costs may exceed two million dollars (\$2 million) more than the value of the warehouse. She asks you whether she has any personal liability in this matter. What advice do you give her?

C. Schluebee offers to convey title to the warehouse to the Chase Bank, which currently holds a mortgage on the property. She tells the bank that there is a "safe harbor" because the environmental laws do not impose liability upon financial institutions for cleanup costs where those institutions hold "indicia of ownership primarily to protect a security interest." Has Schluebee correctly informed the Bank of its liabilities if it accepts the deed to the warehouse?

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