

Capital University Law School  
Spring Semester, 1997  
Environmental Law  
Professor Schraff

#### Final Examination

Instructions: You have two hours to complete this examination. The answer to each question is worth fifty percent (50%) of your final grade. If you make any assumptions in answering a question, please state each assumption explicitly. Good Luck

Question No. 1. Holy Name High School is located on the southwest side of Cleveland. For several decades, this parochial high school has provided an education to the children of immigrant families who migrated to Cleveland in search of the American Dream for themselves and their children. Since its founding at the turn of the century, thousands of graduates have passed through the halls of Holy Name and on to institutions of higher education. But while Holy Name's academic reputation is outstanding, its athletic teams have experienced little but failure throughout the school's long history. The Holy Name football team the "Green Wave" has lost 64 consecutive football games over the last 7 years.

The Reverend Paddy O'Meara, the principal of Holy Name, has decided that it is time to reverse the athletic fortunes of Holy Name. He undertakes an ambitious fundraising effort to pay for the costs of a new football field, complete with night lighting, new stands and a rapid draining grass field. Thanks to a large, anonymous donation of \$1 million from a well heeled alumnus, Holy Name announces plans to break ground on the new stadium and football field on May 5, 1997.

When construction begins, the contractor, EZ Construction, begins to excavate a portion of Holy Name's campus which, for almost 40 years, was used as a student parking lot. While digging under the old parking lot, one of EZ Construction's earth movers uncovers several rusted barrels, which have lain undetected under the parking lot for more than 40 years. EZ Construction immediately halts work and calls the United States Environmental Protection Agency (USEPA). USEPA immediately sends investigators to the scene.

After a thorough investigation, USEPA learns that the barrels originally belonged to the City of Cleveland, which had used a portion of the property for its municipal trolley operations during the first fifteen years of this century (1900-1925). The City used the property to treat wooden ties, which were used in the construction of trolley track, with creosote, in order to prevent the ties from rotting or being infested with insects. Creosote is listed by USEPA as a hazardous substance. Testing of the barrels and soils in the parking lot confirm that creosote is present at high levels. Worse, USEPA discovers that creosote is oozing out of the soils into the groundwater in the neighborhood. USEPA advises Reverend O'Meara that the creosote contamination poses a threat to the neighborhood and that USEPA must immediately place a lien of \$3 million on school property in order to secure the costs of cleanup if USEPA is required to

spend money to control the contamination and clean it up.

Meanwhile, Reverend O'Meara has learned from several faculty members that, Corey Miller, a chemistry teacher at the school, has been routinely disposing of chemicals from the school's chemistry laboratory in a rose garden near the back entrance to the school. Reverend O'Meara questions Mr. Miller, and learns that acids, sodium, and mercury (from broken thermometers) have been disposed of in the rose garden during the last five years. However, USEPA has not noticed the dead rose bushes, and has concentrated its attention on the parking lot. Reverend O'Meara instructs Miller to keep his mouth shut and to disclose these facts to no one. Similar instructions are given to other faculty members.

A. USEPA brings the results of its investigation to the Justice Department and the U.S. Attorney for the Northern District of Ohio. This morning, Reverend O'Meara receives a call from the U.S. Attorney requesting an immediate meeting at the federal building in downtown Cleveland. He immediately contacts Holy Name's legal counsel, F. Leigh Galinski the senior partner of the Galinski & Rehnquist law firm, and requests that a legal memorandum be prepared summarizing the potential legal ramifications of these developments and outlining what course of action the school should take. As the most junior associate at Galinski & Rehnquist, you are given the assignment of preparing the memorandum. Please prepare this memorandum.

B. McDonald's Corporation approaches Holy Name about purchasing a portion of the school parking lot for a new McDonald's restaurant. The McDonald's Director of Real Estate is located in Los Angeles, and has apparently heard nothing about the recent USEPA investigation. Reverend O'Meara has received an unconditional written offer in the mail of \$750,000 for the property, and wishes to accept the offer immediately without disclosing to McDonald's the results of USEPA's recent investigation. He asks you whether the doctrine of caveat emptor will apply to prevent McDonald's from rescinding the deal if they learn of USEPA's investigation and findings after the property has been sold. What should you tell him?

Question No. 2. The State of Ohio is a member of the Ohio River Sanitation Compact (ORSANCO) a interstate group composed of representatives of all states which border on the Ohio River. Recently, while attending an ORSANCO meeting in Chicago, the Ohio Director of Environmental Protection, Michael ("Water") Jordan, learns that the State of Indiana is planning to propose new water quality standards for the stretch of the Ohio River which borders on Indiana.

Director Jordan approaches you, as the legal counsel for Ohio EPA, and tells you that the City of Cincinnati has a large sewage treatment plant which has just completed a major expansion. Treated wastewater from the expanded plant will be discharged directly into the Ohio River in downtown Cincinnati, and will then flow downstream with the current of the Ohio River. While the water will be treated through the use of "secondary treatment" at Cincinnati's expanded sewage treatment plant, ammonia levels in the wastewater will likely not meet Indiana's water quality standards for ammonia levels in the Ohio River. Director Jordan says that it would be "too expensive" to require Cincinnati to add more treatment facilities, and asks whether the Indiana standards are pre-empted under the federal Clean Water Act, and whether only Ohio's water quality standards (which Cincinnati can meet) should apply.

What advice do you give?