

CAPITAL UNIVERSITY LAW SCHOOL
ENVIRONMENTAL LAW
FINAL EXAMINATION
SPRING 1990

INSTRUCTIONS: YOU HAVE 2-HOURS AND 15 MINUTES TO COMPLETE THIS EXAMINATION. THERE ARE TWO ESSAY QUESTIONS, WITH EACH QUESTION COUNTING TOWARD 50% OF YOUR FINAL GRADE. ANSWER ALL PARTS OF EACH QUESTION. GOOD LUCK!!!!

QUESTION NO. 1:

The CURD Company is a large dairy which produces milk, cheese and 100% natural cottage cheese ("no preservatives added"). The CURD Company uses large amounts of water in preparing its products and discharges its wastewater through two sewers. One sewer is connected to the publicly owned treatment works (POTW) owned by the City of Columbus. A second sewer discharges directly to the Scioto River.

In 1989, an Ohio EPA Inspector visits CURD and takes samples of wastewater being discharged by each sewer. In the sewer, which leads to the Columbus POTW, the EPA inspector notes that the wastewater is white in color because of the high amounts of milk waste being discharged and finds that levels of biochemically oxygen demanding material (BOD) in the wastewater are exceptionally high, in excess of 50 kilograms per day of BOD. A Columbus ordinance limits the amount of BOD in wastewater to 20 kilograms per day when discharged to the Columbus POTW.

The EPA Inspector tests and finds similar BOD levels in the sewer leading to the Scioto River, and also detects certain man-made organic chemicals in the sewer which appear to be coming from a drain in the CURD dairy's laboratory. These compounds include several chemicals with carcinogenic and other dangerous properties, such as polychlorinated biphenyls (PCB's) which appear to be leaking into a laboratory drain from electrical equipment maintained on the facility and methylene chloride, a common industrial solvent used for cleaning metal equipment.

The EPA Inspector asks to see CURD's records, and discovers that CURD has been issued a "NPDES" permit by the Ohio EPA for its wastewater discharge to the Scioto River. The NPDES permit contains a limitation of 45 kilograms per day for BOD discharges and makes no mention of PCBs or other organic pollutants.

a. The EPA inspector questions CURD's president, Ms. Tracy Lancini, about the CURD Company discharges. Ms. Lancini tells the EPA Inspector that, while the discharges to the Columbus POTW exceed the 20 kilogram daily limit, CURD has taken several steps to reduce its BOD discharges to the City, and cannot afford to do more. Ms. Lancini produces company financial records to document her claim that the company is barely breaking even, and has no ability to make additional capital expenditures for wastewater control equipment to control its BOD discharges to the Columbus POTW. Upon returning to his office, the EPA inspector asks you, the Ohio EPA attorney, whether Ms. Lancini's explanation provides a defense to

noncompliance. What answer should you give to the EPA inspector? Explain.

b. When questioned about the discharges of BOD, PCBs and methylene chloride to the Scioto River, Ms. Lancini informs the EPA inspector that the company treats its wastewater discharges with equipment which meets EPA standards for Best Practicable Treatment (BPT). The EPA inspector asks you to bring an enforcement action against CURD Company for violation of applicable discharge limitations. What standards, if any, have been violated by CURD?

QUESTION NO. 2: You are sitting in your condominium one spring evening in a trendy area of German Village, studying for this final exam, when you notice a strong, pungent odor in the room. You proceed to the basement of your condominium, where you notice the odor growing stronger. Upon closer examination you notice stains on one wall of the basement, which carry the smell of gasoline. Outside, you notice a mechanic at German Village Auto Repair, which is contiguous to your condominium building, emptying the contents of an automobile gas tank on an unpaved portion of the auto repair facility property. After engaging the mechanic in idle chit-chat (and offering to buy him a beer later at Plank's), you find out from him that the employees of German Village Auto often dump used motor oil, cleaning solvents and gasoline in the back of their premises while working on auto repairs. When you ask how long this has been going on, the mechanic answers, "as long as I've been working here. You can't believe how much it would cost to have it hulled away!" Upon further inquiry, you determine the mechanic has worked there for more than 10 years. What causes of action, if any, do you have against GermanVillage Auto Repair?