

Student Exam Number: _____

Midterm Practice Exam

Environmental Law (Course #5390)

Prof. Hester – Fall 2012

EXAM INSTRUCTIONS

YOU MUST RETURN THESE QUESTIONS AT THE END OF THE EXAM.

Please write your *exam number* in the blank on the top of this page. Then write your *exam number* on the General Purpose – NCS – Answer Sheet (scantron) that you have been provided using a *No. 2 pencil*.

If you are *handwriting* your exam, write your exam number on the cover of *each* of your bluebooks. Also number the bluebooks to indicate how many in total you turn in and the correct order. For example, if you use four bluebooks, they should be labeled “1 of 4”, “2 of 4”, “3 of 4”, and “4 of 4”. Use **ONE SIDE** of a page only and endeavor to write legibly. Also, remember to leave yourself some space in between answers so that you can come back to an answer if you desire.

If you are using a *computer* to take the exam, you must use the Law Center’s exam software. Treat each *question* in Part II of the exam as one question.

This exam is open-book and you may use any written materials assigned for this class or prepared by you (either individually or with others). A dictionary will be provided in the examination room. You may not use any materials stored on computer or disk or any electronic materials. You are bound by the Law Center’s Honor Code and must sign the Pledge with your exam number at the end of these instructions. We also will ask you to affirm your attendance at the end of these instructions.

Below is the percentage each section will count towards your final exam grade and the time we estimate you should allow to answer each section. You will have **three hours** to complete the examination.

Section Number	Question Type	Number of Questions	Estimated Points Value	Estimated Minutes to Spend on Section
I	Multiple Choice	30	30	60
II	Essay Questions	2	90 (45 points per essay question)	120 (60 minutes per essay question)
Total			120	3 hours

For the multiple choice questions in Part I, choose the best answer to the questions presented. **There is only one correct answer for each question.** Fill in the bubble surrounding the letter representing your answer on the General Purposes – NCS – Answer Sheet (scantron) that you have been provided. Answer all questions; there is no penalty for guessing. **Only answers marked on the scantron will be graded.** However, if you find a question is ambiguous or would like to otherwise explain your answer choice, feel free to do so in your bluebook or on your laptop after marking your answer choice on your NCS Answer Sheet.

For Part II, the issue-spotting essays, your job is to analyze the facts in each question. Do not make up facts or law or fight the facts given. If you need more information to resolve a difficult question, state what information you would need and how it would affect your answer. Read carefully. Think before you write. Good organization, clear statement, and avoidance of irrelevancies are all appreciated. A longer test answer will not necessarily translate to a better score. In fact, sometimes the opposite is the case.

Please take time to answer all sections of the test. You are much better off answering all sections of the test with less attention than you might desire instead of failing to answer all the questions asked. Note that I tend to give some points just for effort, so don't leave a blank section.

At the end of the exam, you **MUST** turn in the exam questions, your answer sheet, any scrap paper, and your flash drive or bluebooks.

HONOR CODE. It is a violation of the Honor Code to use any **UNAUTHORIZED** aid in connection with this exam; to fail to report any such conduct on the part of any other student that you observe; to retain, copy, or otherwise memorialize any portion of the exam; or to discuss its contents with any student in this class who has not yet taken it. ***Do not discuss this exam with anyone that is not a member of this class. Do not discuss this exam with any student in the class without first asking such student whether he or she has taken the exam.***

***** CONFIRM YOUR CLASS ATTENDANCE ON THE NEXT PAGE *****

By placing your exam number in the PLEDGE blank below, you are representing that you have or will comply with these requirements. Your representation is subject to the honor code. If for any reason you cannot truthfully make that pledge, notify the exam proctor as soon as possible.

PLEDGE: _____

(Fill in your *exam number*, not your name.)

ATTENDANCE (select one).

____ I affirm that I have missed six or fewer classes in Environmental Law this semester.

OR

____ I missed more than six classes. Specifically, I missed ____ days.

(Fill in your *exam number*, not your name.)

Part I: Multiple Choice and True-False Questions

10 minutes

25% of exam grade

For the multiple choice questions in Part I, choose the best answer to the questions presented. **There is only one correct answer for each question.** Fill in the bubble surrounding the letter representing your answer on the General Purposes – NCS – Answer Sheet (scantron) that you have been provided. Answer all questions; there is no penalty for guessing. **Only answers marked on the scantron will be graded.** However, if you find a question is ambiguous or would like to otherwise explain your answer choice, feel free to do so in your bluebook or on your laptop after marking your answer choice on your NCS Answer Sheet.

STUDENT ID NUMBER _____

Multiple Choice Questions

1. In the seminal case of *Chevron U.S.A. v. Natural Resources Defense Council*, the U.S. Supreme Court held that:
 - a. federal courts should defer to EPA's interpretation of the Clean Water Act to prohibit discharges of even small amounts of oil into waters of the United States that cause a sheen on the water's surface;
 - b. unless Congress has directly spoken to the precise question at issue, federal courts should defer to an agency's reasonable regulatory interpretation as a permissible construction of a statute;
 - c. EPA's interpretation of the term "stationary source" in the Clean Air Act to include bubbling was acceptable;
 - d. b and c;
 - e. all of the above.

2. Which of the following is a "hazardous waste" under EPA's regulations implementing RCRA?
 - a. characteristically hazardous ash from a municipal waste incinerator that burns only household hazardous wastes;
 - b. a mixture of characteristically hazardous wastewater and non-hazardous effluent when the resulting mixture no longer displays the characteristic;
 - c. a mixture of a small amount of listed solvent wastes into a large impoundment filled with non-hazardous wash water;
 - d. a and c;
 - e. all of the above.

3. Persons wishing to bring an environmental justice claim must prove:
 - a. they were victims of intentional discrimination that resulted in a violation of their federal constitutional right to equal protection;
 - b. they were victims of federal agency action that imposed a disparate impact on them in a manner prohibited by Section 601 of Title VI of the Civil Rights Act;

- c. they were victims of intentional discrimination that resulted in a violation of their rights to judicial review under Executive Order 12,898;
 - d. a and b;
 - e. all of the above.
4. Which of these plaintiffs is *least likely* to recover response costs in a private action under CERCLA?
- a. An owner of a mine who cleans up heavy metals contamination left in tailings piles by prior operators from over 100 years ago.
 - b. A former operator of a municipal waste landfill who voluntarily cleans up contamination after a threatened enforcement action by a state agency.
 - c. An energy company that cleans up chemical and metal debris wastes generated during its exploration and production activities.
 - d. A service station owner whose underground storage tank has leaked gasoline into an underground aquifer used for drinking water by nearby residents.

Part I: Multiple Choice and True-False Questions

20 minutes

75% of exam grade

Answer ALL of the following questions. Please provide concise legal opinions supported by relevant case law, statutes, regulations, and examples discussed in class or in the readings, not broad policy discussions.

Question One (45 points):

After graduating from law school, you join an environmental advocacy group dedicated to protecting disadvantaged communities from environmental hazards and toxins. Your first client is a neighborhood association whose members include homeowners in Gallegos Oaks, a predominantly Hispanic community located in southeast Houston. They are extremely upset because ChemCorp, a large chemical company, has announced plans to build an entirely new large chemical production facility on abandoned property at the Houston Ship Channel. ChemCorp's new facility lies within a half mile from the neighborhood, and the facility's property line abuts a new high school whose students are drawn almost entirely from Gallegos Oaks.

ChemCorp's new facility will produce artificial rubber, and these rubber products will use feedstocks that include benzene and other organic compounds. Once constructed, the facility will likely include reactor towers that will discharge volatile organic compounds through pipes to a large flare at the facility. Some fumes, including nitrous oxides, will simply escape into the air as fugitive emissions. The facility will draw water from the Houston Ship Channel, use it in its production process, and then discharge the water back into the Houston Ship Channel along with some production effluent. Last, the facility will generate a significant amount of rubber that will not meet strict purity requirements for some customers (e.g., medical devices). ChemCorp plans to either sell the rubber as scrap to other rubber producers with less demanding clients, or will simply burn the rubber on-site for energy recovery.

Last, the proposed production site sits next to the Houston Ship Channel. As a result, the land is frequently wet and marshy, and storm water runoff from the site flows directly into the Houston Ship Channel. The area has a sizable biological community growing onsite. Some of the plants include cat tails and other marshy plants, and migratory birds use the site as a roosting spot during migrations. Some of those birds are listed as either threatened or, in one case, endangered.

- a. One of the residents believes passionately that ChemCorp's new facility violates her rights against environmental injustice. Explain what rights the Gallegos residents might have to pursue legal and administrative remedies for environmental justice in this situation, and the difficulties those environmental justice claims would face. (10 points)

- b. Aside from environmental justice issues, list the potential challenges under federal environmental statutes that the Gallegos Oaks residents might raise to the construction and operation of ChemCorp's new facility. Be sure to summarize the major permits that the residents could challenge. If you lack sufficient information to recommend any particular important action, list the additional key facts that you need to obtain. (15 points) **[DO NOT ANSWER THIS SUBQUESTION – ONLY FOR YOUR REFERENCE]**

Weeks after your meeting with the Gallegos Oaks residents, you get a call from your best friend from law school. She is now the new in-house environmental counsel at ChemCorp, and she has received a letter from the Gallegos Oaks residents. After running through the potential challenges that you helped the residents prepare, your friend amiably warns you that the residents have no chance of succeeding.

- c. For each of the challenges that you listed above (aside from environmental justice issues), offer the strongest defenses that ChemCorp can offer to each claim. If you lack sufficient information to assert a particular important defense, describe the item or data that you will need to obtain. (10 points) **[DO NOT ANSWER THIS SUBQUESTION – ONLY FOR YOUR REFERENCE]**