

Question 1

(66% - 2 hours, 20 minutes suggested)

In 1995, Robert Romano bought a house and 100 acres of land in Springfield, Ames. Shortly after he moved in, Romano began to bottle and sell water from a spring on the property. Romano's bottled water business grew quickly over the years, as many customers claimed that the spring water had medicinal properties. As the popularity of the water grew, Romano began to allow customers, for a fee, to draw water directly from the spring. Visitors were drawn to his property by the water, and by the idyllic nature of the property, which was also home to the endangered Springfield finch.

In 1998, the Mega-Media Company bought property adjacent to Romano's property and began construction of Mega-Park, which it promised would be the largest amusement park ever built. The amusement park property was also located adjacent to Mercer Lake. Mercer Lake is a man-made lake that exists wholly within the State of Ames, but the lake is frequently used for boating and fishing by tourists from other States. Mega-Media wanted to incorporate the lake into the design of the park, so the company placed hundreds of tons of gravel and soil in the lake to create Mega Island. Most of the park's water rides are located on Mega Island, which is only accessible by boat.

In response to complaints from Romano and other neighbors, Mega-Media decided to build a parking lot for the park 2 miles away from the park, and to limit traffic into the park. In order to construct the parking lot, Mega-Media drained and paved 20 acres of mosquito infested swamps. The swamps were adjacent to the George River, which flows into Ames from the State of Georgia.

The park opened for business in January, 2001, and has been attracting thousands of visitors every day. The park operates from 8:00 in the morning until 11:00 at night. The noise and bright lights seem to be having ill effects on the Springfield finches in the area. While bird watchers spotted thirteen new nests in the first six months of 2000, they found no new nests in the six months after the park began operations.

Romano and several of the neighbors are also concerned about the storage of chemicals at the park. Mega-Media uses solvents to de-grease and clean many of the rides at the park. The neighbors are concerned because the level of toxic chemicals in the solvents exceeds levels specified by EPA in its TCLP testing procedures. In an effort to minimize the amount of waste that it generates, the company reuses the solvents several times before it ultimately sends them to a company to be recycled. While the solvents are being used and reused at the park, they are stored in large steel drums. Mega-Media usually stores the solvents at the park for 13 months before it sends them off-site to be recycled. Although Ames waste management laws require companies to store solvents inside in closed containers, Mega-Media stores the drums outside and does not always close the drums.

A few months ago, several major storms swept through Springfield, leaving record amounts of rainfall in their wake. During one of the storms, several barrels of solvents, which were not covered, overflowed due to the volume of the rain. Some of the solvents flowed into the Walter River, a tributary of the George River. Some solvents also flowed into the park's storm sewer system, which carried them into the Springfield sewage treatment plant. The problems created by the solvents in the treatment plant forced the plant to shut down for 2 days.

A.

Mega-Media's spill of solvents polluted the groundwater that was the drinking water source for Robert Romano and the surrounding community, and that fed the spring on Romano's property. As a result, Romano has been forced to buy a competitor's bottled water for his own drinking water, Romano's bottled water sales have dried up, and few visitors are coming to his spring. Mr. Romano would like some compensation from Mega-Media for his injuries and would like the court to order Mega-Media to discontinue using the solvents in its operations, or to store them appropriately. Are there any common law actions that he can bring? If so, for each cause of action, identify: (1) the type of action; (2) the elements of the prima facie case; (3) the relief available; and (4) whether it's likely that Romano will prevail on the cause of action and recover the available relief, and why? (DO NOT ADDRESS STANDING IN YOUR ANSWER) (25 minutes suggested)

B.

Romano also believes that Mega-Media violated federal environmental laws by using, storing, and disposing of the solvents in the manner that it did. Assuming that Ames has not assumed authority to administer any of the federal environmental laws and that Mega-Media did not obtain any environmental permits for any activity at the amusement park, identify the statutory violations that the federal government could prosecute regarding the use, storage or disposal of solvents. For each violation, please identify (1) the statutory authority for the cause of action; (2) the government agency that would bring the enforcement action; (3) the prima facie elements of each cause of action, and the facts that indicate that those elements have been met; and (4) the types of judicial relief available to the government agency, and the statutory authority for each type of relief. (35 minutes suggested)

C.

Would any federal agency be required to conduct an environmental impact statement in order to determine whether to bring an enforcement action for the violations identified in the prior question? Why or why not? Do any laws require the agencies, prior to instituting an enforcement action, to examine whether the institution of an action, or the failure to bring an action, disparately impacts minority or low income communities? (5 minutes suggested)

D.

The Ames Audubon Society is a non-profit organization that is dedicated to the study, observation, and protection of birds. The Audubon Society is concerned about the effect of the noise and lights from the park on local birds. Assuming that Mega-Media did not obtain any permits for any of its activities, are there any grounds upon which the Audubon Society could sue Mega-Media? The Audubon Society would like the court to order Mega-Media to shorten its operating hours, and dim its lights, and would like the court to force Mega-Media to pay thousands of dollars in civil penalties. Please advise the Audubon Society regarding the cause(s) of action that could be brought against Mega-Media regarding the noise and light pollution. For each cause of action, please identify: (1) the authority for the cause of action; (2) the court in which it should be brought; (3) the elements of the prima facie case; (4) the relief available; (5) whether the Audubon Society can establish standing to sue; and (6) whether it is likely that Audubon would prevail on the cause of action if it brought it, and why? (25 minutes suggested)

E.

Assume that the Ames Audubon Society lobbies the City Council of Springfield, and convinces the City to adopt an ordinance that limits the hours of operation of amusement parks, so that parks may not open until 10:00 in the morning, and must close by 10:00 at night. Mega-Media assumes that the ordinance will reduce the revenue that the park generates by 15%. Is Mega-Media entitled to compensation for the reduction in the value of its property that the ordinance caused? Why or why not? (10 minutes suggested)

F.

The Five Flags Amusement Corporation is a competitor of Mega-Media, and Five Flags always complies with all environmental laws and regulations when it constructs and operates an amusement park. While Five Flags does not own any land in the vicinity of the Mega Park, it is concerned that the manner in which Mega-Media constructed and operated the Mega Park will soil the reputation of all amusement park operators, and make it difficult for Five Flags to obtain environmental permits in the future. Accordingly, Five Flags would like to sue Mega-Media for any violations of environmental laws that occurred when Mega-Media built Mega Island or the parking lot for the park. Please advise Five Flags regarding the cause(s) of action that could be brought against Mega-Media regarding the island or parking lot. For each cause of action, please identify: (1) the authority for the cause of action; (2) the court in which it should be brought; (3) the elements of the prima facie case; (4) the relief available; (5) whether Five Flags can establish standing to sue; and (6) whether it is likely that Five Flags would prevail on the cause of action if it brought it, and why? (40 minutes suggested)

Question 2

(34% - 1 hour, 10 minutes suggested)

In 1950, Oliver Douglas left his job in New York City and bought a small farm in Springfield, Ames. During the ten years that Douglas and his wife, Lisa, operated the farm, they did not use any chemical pesticides or insecticides on the farm. In 1960, they sold the property to the Mayberry Chemical Company. Mayberry built and operated an agricultural chemical and pesticide formulation plant on the property for ten years. During that time, Barney Fife, an employee of the Mayberry Company, buried several drums of TCE in a pit on the property. Unbeknownst to Fife or the Mayberry Company, Opie Taylor, an employee of Specialty Chemicals, Incorporated, also buried TCE waste from Specialty Chemicals on the Mayberry Company's property.

In 1970, the Mayberry Company sold its business and property to AgPestCo, which continued to formulate pesticides on the site. In 1975, a tornado swept through Springfield and damaged several buildings on AgPestCo's property, including a chemical storage facility. As a result of the tornado, 100 gallons of arsenic were spilled on the property. During the time that AgPestCo owned the property, Goober Pyle, an employee of Waste Disposal, Inc., also disposed of arsenic on the AgPestCo property. Waste Disposal, Inc. was retained by the Green and Josephson Tobacco Company to dispose of its arsenic-containing waste at the Springfield landfill, but Pyle disposed of it at the AgPestCo site instead.

The Natural Pesticide Company bought the AgPestCo property and business in 1980 and produced organic pesticides at the site. The Natural Pesticide Company did not use or dispose of any hazardous substances on the property while it owned the property. Unfortunately, the demand for organic pesticides was low, and the Natural Pesticide Company sold the business to Multinational Chemicals, Inc. in 1983. While Multinational Chemicals, Inc. was a subsidiary of the GloboChem Corporation, the two companies had the same Boards of Directors and officers.

Multinational Chemicals resurrected the pesticide formulation plant on the property, and also opened a facility to pressure treat wood with chromium, copper and arsenic. Carolina-Atlantic, a timber company, entered into a contract with Multinational Chemicals to pressure treat wood that it planned to sell for deck construction and other outdoor use. Although Carolina-Atlantic sent the wood to Multinational for treatment, Carolina-Atlantic owned the wood throughout the treatment process. In addition, Multinational owned and provided the chemicals that would be used to treat the wood, until they were incorporated into the wood, at which time the chemicals became the property of Carolina Atlantic, under their agreement. Further, the contract between the parties included the following language, "Because the pressure treating process is likely to result in spills of arsenic, chromium and arsenic, Multinational agrees to indemnify Carolina-Atlantic for any liability incurred by Carolina-Atlantic related to disposal of waste on Multinational's property." As the parties anticipated, arsenic and other hazardous substances were spilled or disposed of on the property while Multinational operated the wood treatment facility.

In 1995, Multinational ceased operations at the wood treatment plant and the pesticide formulation

plant and decided to sell the property. On the advice of her son, Estelle Costanza decided to buy the property and build a home for her retirement. Costanza never visited the property before she bought it, so she did not see the hundreds of drums of waste that were stored on the property. She was surprised, but pleased, that she was able to buy such a large piece of property for such a low price.

However, when she moved to Springfield and saw her new property for the first time, she was not pleased. Within two weeks after she bought the property, tests of groundwater in the area indicated that there were high levels of arsenic in the water. The Ames Department of Environmental Protection conducted an investigation and discovered that arsenic that was disposed on Costello's property was contaminating the groundwater. The State spent \$1 million to conduct a "removal action" on Costello's property. As part of the removal action, the State fenced the property, brought in temporary drinking water supplies, and removed several drums of arsenic from the property. Incidentally, arsenic is a hazardous substance under the Superfund law. TCE is also a hazardous substance, but the State did not find any evidence that any TCE was released at the facility.

A.

Can Estelle Costanza be held liable under Superfund for the cost of the removal action? for future costs of any remedial action? If so, identify (1) the provision of CERCLA under which she might be held liable; (2) the prima facie case against her; and (3) any defenses to liability that she might have under CERCLA? (15 minutes suggested)

B.

If Costanza is held liable for the costs of the removal action, can she recover her costs from the Superfund? Can she order other parties, under Section 106 of Superfund, to conduct a remedial action to clean up the property? If she can sue other persons to recover the costs of the removal action, will the other persons be held jointly and severally liable for those costs? (5 minutes suggested)

C.

Assuming that Costanza is held liable for the costs of the removal action, who are the other potentially liable parties that she could sue to recover her costs? For each potentially liable party, identify (1) the provision of CERCLA under which they can be held liable and (2) the prima facie case against them. In addition, please indicate whether any parties have defenses to liability, and whether such defenses are likely to be successful. (50 minutes suggested)

ENVIRONMENTAL LAW FINAL EXAM

SPRING SEMESTER

PROFESSOR JOHNSON

1. The exam consists of 2 questions and is 5 pages long. You have **3 ½ HOURS** in which to complete the exam. The first question is worth approximately **66%**, and the second is worth approximately **34%**. The suggested time allotments are:

Question 1: 2 hours, 20 minutes

Question 2: 1 hour, 10 minutes

2. Questions will be graded on your ability to focus on the pertinent legal issues and discuss them in a knowledgeable and convincing fashion. Organization and coherence of your answer will count, so invest some time thinking about the problem and organizing your answer before you begin writing.
3. This is an **OPEN BOOK** exam. Any materials, including non-commercial outlines prepared by you, are permitted in the examination room.
4. If you believe that unintended ambiguities are present in any question, the safest approach is to present arguments based on alternative interpretations of the question. Alternatively, make the most reasonable assumption that you can, and state the assumption in your answer.
5. Please remember to write your examination number on the examination and the blue books, and return the examination with the blue books when you have completed it.
6. Good luck and have a nice summer!