

**University of Utah  
College of Law  
Examination Cover Sheet**

**Student Examination Number:** \_\_\_\_\_

**ENVIRONMENTAL LAW**

**Professor Robert Adler**

**Thursday, Dec. 14, 2000  
8:30 a.m.**

**Fall Semester 2000**

**Time Allowed:** 3 hours

**Special Examination Instructions:**

1. This exam consists of 4 essay questions, some of which have subparts. Grading points are in direct proportion to the minutes assigned for each question, for a total of 180 minutes/points. Point allocations are indicated in brackets after each question.
2. Answer all questions in your blue books or computer disks. No credit will be given for answers that are not included in the blue books or computer disks.
3. Some of the questions have multiple parts. Make sure you answer all parts of all questions.
4. The exam consists of 2 pages NOT including these instruction pages. Make sure you have all pages before proceeding.
5. Some students will be taking this exam during make-up sessions. PLEASE do not discuss this exam with anyone until the exam period is over.

### General Examination Instructions:

1. Print your Examination Number, the title of the course and the instructor's name on the front of every bluebook used.
2. Number each bluebook (1 of 3, 2 of 3, 3 of 3, etc.) and place all bluebooks and examination questions inside the first-numbered bluebook.
3. Students **must submit the examination questions with the answers.**
4. Students who are typing must use the yellow paper provided.
5. Students may not take any bluebooks or scratch paper from the examination room, whether blank or used.
6. If the examination utilizes a computer answer sheet, print your Examination Number at the top of the front side of the computer answer sheet in the space provided. Complete the space marked "Identification Number" (on the back of the computer answer sheet) by filling in four zeros followed by your Examination Number. For example, if your Examination Number is 99999 fill in 000099999.

1. In May, 1998, EPA promulgated Phase IV of its hazardous waste treatment regulations under the Resource Conservation and Recovery Act (RCRA). One part of the rules defined the circumstances under which residual or secondary materials generated in mining and mineral processing operations constitute “solid waste.” For purposes of this question, we will avoid the convoluted “exception to an exclusion” manner in which EPA wrote its definition, which prompted the reviewing court to write: “Lewis Carroll would be proud.” At bottom, EPA’s regulation provided that secondary materials in the mineral processing industry are NOT considered “solid waste,” and cannot be regulated as such, if they are destined for recycling and are stored in tanks, containers, buildings, or on properly maintained pads. Any materials that are not stored in that manner, for any period of time, even if destined for in-plant recycling, would be regulated as solid wastes (and if they met the appropriate additional requirements, as hazardous waste). In the latest in the series of cases governing what is a “solid waste,” this regulation was challenged by the National Mining Association and the American Iron and Steel Institute in the U.S. Court of Appeals for the D.C. Circuit.
  - A. What standard of review should the court use in deciding this challenge? **[15]**
  - B. After evaluating the arguments for both sides, explain how you think the court should have decided this case, and why. **[30]**
  
2. “The Valleys” is a new ski resort on private land in the Wasatch Mountains. To ensure consistent snow conditions, it obtains a valid water right under state law to withdraw water from West Canyon Creek and to pump it to snowmaking machines at the top of the mountain. West Canyon Creek begins in the mountains but flows through significant suburban and commercial development. Therefore, at the point of withdrawal, the creek contains significant amounts of nitrogen, phosphorus, bacteria, and suspended solids. Lake Pristine is a small, mountain lake on the other side of the mountain, with generally excellent water quality. However, because some of the existing rainwater and snowmelt runoff to the lake is through lands used for cattle grazing, water quality standards for bacteria are currently violated by a very small margin. Water from the snowmaking process is expected to reach Lake Pristine in two ways. First, to maintain system pressure, the resort needs to run more water through the pipes than is actually used to make snow. The excess water is released through a pipe into Lake Pristine. There is no evidence that any pollutants will be added to the water from the piping system. Second, the snow generated by the machines, which will produce snowmelt runoff in the lake, will have higher concentrations of dissolved nutrients (nitrogen and phosphorus) than natural snowmelt. Some hydrologists believe that this could cause violations of water quality standards for those pollutants in the lake.
  - A. What, if any, Clean Water Act permit(s) might be required in connection with the snowmaking equipment, and why (or why not)? **[30]**
  - B. Assuming that one or more Clean Water Act permit is required, what control provisions should be included in the permit, and why? **[20]**
  - C. What other legal strategy (or strategies) might be used to address the combined water quality impacts on Lake Pristine from the snowmaking operations? **[25]**

3. The U.S. Environmental Election Commission (EEC) determines, in response to complaints from the Reverend Jesse Jackson and adversely affected voters, that dimpled and pregnant chads may pose an unreasonable risk to human health and the environment. Unbeknownst to most Americans, tens of millions of discarded chads from past elections, which are ridden with dyes and other potentially harmful chemical substances, may have contaminated drinking water supplies, poisoned wildlife habitat, and caused other adverse environmental effects. Evidence regarding these potential effects is sketchy, but more research is planned. There is some (inconclusive) evidence that chads can cause cancer, birth defects, and other illnesses. In response to these preliminary findings, Congress initiated hearings on proposals for a federal Chad Health Assistance and Detection Act (CHADA). You are a staff attorney for the congressional committee sponsoring these hearings. The committee chair asks you to characterize, explain, and write a brief analysis of the legal and policy benefits and drawbacks of each of the following proposals suggested by witnesses from various interest groups. **[Do not address any issues arising out of election law or constitutional law, which will be evaluated by another member of the committee staff!]** [10 each]
- A. An environmental group proposes that Congress adopt a standard requiring all voting districts to use the “best available voting methods technologically and economically achievable. Such methods shall include non-chad voting technologies wherever such methods are reasonably available.”
- B. The Chad Voting Machine Institute of America proposes a standard that reads: “the Administrator of the EEC shall require the use of such voting methods as are reasonably available to protect human health and the environment from any unnecessary adverse effects of voting.”
- C. A voting rights group proposes a scheme under which voting districts will be assessed a tax of one dollar for every chad that is produced and released into the environment, and \$0.50 for every chad that is produced but recovered and disposed of in an EEC-approved “chadfill.” Proceeds from the tax will be used to subsidize non-chad voting technologies for poor voting districts.
4. A driver for Safe-As-It-Gets Transportation Company loaded her tanker truck half full with vinyl toluene produced by Gatherer Chemical Corporation. She then drove to Duoroyal Chemicals, where she added a chemical agent to the vinyl toluene already in the tank. The agent produced by Duoroyal is designed to preserve the vinyl toluene until it is used in an industrial process. After driving all day, she stopped for the night at a trucking terminal owned by U-Rent Industrial Trucking, which also owns the tanker truck used here. During the night, the truck tank ruptured, causing all of the chemical mixture to spill onto the parking lot, from where it contaminated nearby soil and threatened to spill into a nearby creek. After being notified of the accident, Duoroyal responded with its emergency response team, contained and cleaned up the spill consistent with all requirements of the National Contingency Plan. It sought contribution for its response costs from Safe-As-It-Gets, Gatherer, and U-Rent, all of which refused to contribute to the response costs. Analyze whether Duoroyal can successfully sue each of these entities under CERCLA. [30]