

Environmental Law
Fall 2011 - Richards

Put your exam number on each page of the examination if you are handwriting the exam. Do not put your name or any other identifying information on the examination. Read the entire exam before answering any questions. Make sure you have all the pages and that they are all different.

Pay attention to the word limit and other instructions for each question. If you are not using a computer, write your answer on the lined sheets that follow each question. Do not use tiny writing - hand writers are not held strictly to the word limits, but are expected to be in the general ballpark. Use no more than the space provided. **Do not write answers on the back.** You may use the back for scratch paper.

Exams are to be turned in to me at my office, room 426. If you use the computer, you do not need to turn in your paper exam, just toss it in the trash.

This exam will look at real environmental problems in Louisiana. Each question will require you to analyze a Louisiana problem using the law and policy we have discussed this term.

Question 1

The Mississippi drains a substantial part of the lower 48 states. This watershed includes major cities and millions of acres of agricultural land. The water picks up pollutants from municipal sewage, industrial waste water, and agricultural runoff. By the time it reaches Baton Rouge, the water quality is very low. The City has hired your law firm to find arguments to use to the EPA to get the city a break on the effluent standards for their sewage treatment plants. The city thinks that since they dump into the Mississippi, it makes no sense to have such high standards. Without a break, the city will have to spend more than a billion dollars to build new sewage treatment plants and piping. Write a short memo (no more than 750 words) for the Baton City Attorney explaining the basic regulatory framework for municipal sewage, the possible legal arguments for why the quality of the Mississippi should be considered in setting the standards for effluent quality for Baton Rouge sewage treatment plants, and any other rationales why the EPA should give the city a break. Support your arguments with cases and statutory cites as necessary, but since length is limited, make sure you citations are really on point.

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Question 2

One of the schemes to preserve and restore the central and eastern Louisiana coasts is to divert the Mississippi and its distributaries during floods to deposit sediment carried in the river to high risk coastal areas. Diversions pose many environmental questions. Key among these is whether there is enough sediment in the river to do any good. Sediment is tied up behind dams upstream and is also kept out of the river by levees and flood control projects throughout the Midwest. Your firm has been hired to explore whether Louisiana can force the Corps of Engineers and communities upstream to let the sediment go. This is a legally murky area, but before you can reach the substantive law, you have to address the standing issue. Write a short memo (750 words) to the Governor analyzing your best arguments for getting standing to sue to force the release of this sediment. The senior partner reminds you not to forget your basic constitutional law and include core authority. He also warns you to anticipate Justice Scalia's hostility to standing in environmental cases.

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Question 3

After Hurricane Katrina, many areas of New Orleans were flooded. The first step in restoring a flooded house is to strip out all the sheetrock and plaster to get rid of mold and to allow access to the wiring. Volunteers from The Friends of Saint Elaine, a private service organization like Habitat for Humanity, gutted homes of those too poor to hire contractors to do the work for them. The debris from the gutted homes was hauled to a construction debris landfill that had been opened after the hurricane. The Friends only kept records of the names of the volunteers who worked each house. The president of the Friends read a story in the Times-Picayune about the lead hazards in older New Orleans housing. He then realized that much of the material that the Friends had ripped from the houses was loaded with lead paint. As unskilled volunteers, they had taken no precautions in handling or disposing of the materials. They just dragged it out into the yard and other volunteers from the Friends shoveled it into pickup trucks and took it to the dump. In a panic, he called his old friend, your senior partner, this morning. She promised to have lunch with him today and explain his legal situation.

She has asked you to prepare a memo (1500 words) on the potential legal violations and the liability of the Friends foundation and the individual friends who handled the materials. She knows you have just finished an environmental law course and have your book for reference. She Googled lead paint and found a rule from EPA about disposing of lead paint waste. (Included with the exam.) She says it has a lot of irrelevant stuff, but there should be something there that will help you. She says lunch is at 12:30 and she needs some answers before then. She understands that there is not enough time to research the issue, she says you just have to do the best you can in the time you have. She reminds you that this is not a law review article, but you know she likes to have a little information from cases and statutes to drop into the discussion with clients. Since it is a Saturday, she says you can have the rest of the day off after you give her the memo.

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