

NAME: _____

I understand that my work on this exam is subject to the requirements of the Academic Honesty standards contained in Montana Tech's Student Handbook, and that I have full responsibility for the content and integrity of all responses in this exam. I acknowledge that this is an open-book exam, but that I may not work with anyone on the answers provided herein. I certify that all answers given on this exam are wholly my own.

SIGNATURE: _____

2020 Environmental Law Midterm (EENV 387)

INSTRUCTIONS: answer the following questions using the information we have learned in class about the structure of our governmental system generally and environmental laws more specifically. With the exception of RCRA, you are not expected to know the nuances of any laws discussed in a hypothetical beyond what you are told in the hypothetical itself.

1. Name the three branches of the federal government (3 pts):

- a. _____
- b. _____
- c. _____

2. Please give two examples of how the judiciary serves as a check on legislative power. (2 pt)

3. True or false: the federal government has the power to enact laws regulating wholly intrastate commerce. _____ (1 pt)

4. Please explain your answer to the previous question. (1 pt)

5. Please explain the two ways in which a constitutional amendment may be added to the U.S. constitution (2 pts).

6. What is “guidance” issued by an administrative agency, generally? (1 pt.)

- a. Enforcement statements.
- b. Another word for a statute.
- c. A checklist of applicable statutes and regulations.
- d. “Best practices” meant to help you understand the agency’s statutes and regulations.

7. You believe that your neighbor, Acme Incorporated, has allowed hazardous substances to spill onto the ground, and that those substances have infiltrated the groundwater, forming a plume beneath your property. Based upon this fact scenario, please answer the following:

a. If you decided to file a court case, what are two causes of action you might bring against Acme Incorporated? (2 pts)

(1) _____

(2) _____

b. Where would you bring your lawsuit, and why? (2 pts)

c. You prevailed in your lawsuit—good for you. However, Acme wants to appeal. based upon your answer to (b), what court would Acme appeal to? (1 pt)

d. Bob lives 2,000 miles away from you, and has no relationship to you or your property; in fact, he's never been to your state. Nonetheless, he read a newspaper article about your travails, and is absolutely outraged that Acme would contaminate your groundwater. Give one basis upon which the Court could have dismissed the lawsuit had Bob brought it, instead of you. (1 pt)

8. If I asked you to look up the following citations, what could you tell me about each item, before you even started to look them up (what can you tell me about the citation just from looking at it)? (4 pts)

a. *Asarco, LLC v. Union Pacific Railway Co.*, 765 F.3d 999 (9th Cir. 2014)

b. *Aldrich v. Asarco Inc.* 375 N.W.2d 150 (Neb. 1985)

c. Mont. Code Ann. § 75-10-415

d. 40 C.F.R. 260.21

9. Suppose that, as a result of litigation brought by a property owner against DEQ, the Montana Supreme Court has found that a statutory requirement under The Cleanest Stuff Act only applies to operators of a facility, and not to owners or arrangers associated with that facility. Members of the legislature are outraged, since they thought that the statute applied to operators, owners, and arrangers. What can these outraged legislators do? (pick one) (1 pt)
- a. Appeal the decision to the United States Supreme Court
 - b. Wait until the next legislature convenes and seek to amend the statute
 - c. Tell DEQ to adopt rulemaking compliant with the administrative procedures act which clarifies that the statute applies to owners, operators, and arrangers
 - d. Start a citizen suit against the Montana Supreme Court.

10. What is the central thesis of the Tragedy of the Commons? (1 pt)

11. What is the constitutional basis under which the federal government has enacted environmental statutes? (pick one) (1 pt)
- a. Nondelegation Duty
 - b. Equal Protection
 - c. Full Faith and Credit Clause
 - d. Commerce Clause

12. Farmtopia, Inc. owns property in Carbon County, Montana. The federal government has determined that a new federal interstate highway is needed to connect Lovell, WY and Billings, MT and that it will go through Farmtopia's property. What constitutional provision requires the federal government to pay Farmtopia for the value of the property taken? (pick one) (1 pt)

- a. Takings Clause
- b. Commerce Clause
- c. Confrontation Clause
- d. Supremacy Claus

13. Xylodevelopments, Inc. has come to you for advice regarding whether they are acting in compliance with the law. They are regulated by the EPA, and have looked at the federal statutes under which they are regulated.

a. Give two examples of other places Xylodevelopments needs to look to ensure that they're in compliance with the law. (2 pts)

(1) _____

(2) _____

b. Upon further discussion with Xylodevelopments, you realize that they are located in a state which EPA has delegated authority to the state's DEQ agency. Who will undertake an enforcement action if Xylodevelopments is in violation of the federal statutes, and why? (2 pts)

c. The state Xylodevelopments is located in has more restrictions than the federal statutes Xylodevelopments has looked at. Is Xylodevelopments required to comply with the state statutes? Explain why or why not. (2 pts)

14. What or who is the “reasonable person” in the common law? (1 pt)

15. What does “mens rea” mean? (1 pt)

16. Explain the difference between riparian water rights and prior appropriation water rights (2 pts)

17. Your client has property next to the Jellystone River in Montana. They want to open a factory that uses water from the river to cool their processes. Explain whether your client can proceed with the project, or whether they need to take any steps prior to commencement with respect to their use of water, and why you chose your answer.
