1. Signing and numbering. Sign and print your name in the blanks above. Put the number found above on each of your answers to the examination (blue books and hard copy) and on the envelope. Do not put your name anywhere on the envelope or on the answers.

2. Submission. Upon completion of the examination, put your answers to the examination in the envelope, fasten the flap with the clasp, and hand in the envelope to the examination administrator. Be sure to enclose all of your answers -- you will be graded only on what is inside the envelope. Do not put the exam questions in the envelope. Hand in the questions separately to the exam administrator.

3. Time. You will be graded only on examination papers received by the announced time. Each student is responsible for ensuring that all the completed examination papers and the examination questions sheets are handed in to the exam administrator.

4. Computers. Students may use computers on this examination. Computers may be used for wordprocessing only. Students must supply their own equipment. Students using computers must take the exam in the assigned typing rooms. Examination papers must be completed and returned to the exam administrator according to the normal exam administration rules. No allowance for additional time will be given for printing, equipment failure, etc. Students must submit a hard copy of their answers.

5. Special Instructions: There are THREE questions. Answer all THREE questions. The questions are of equal weight (20 points each, as indicated -- 60 points total). Allocate your time as you wish, but it may be useful to budget 50 minutes per question, which would leave you 30 minutes to go back over your initial answers.

6. Materials you may consult. This is an open book examination. In preparing your answers you may consult the required course materials -- Environmental Regulation: Law, Science, and Policy, (2d ed. 1996), the 1998 Supplement to Environmental Regulation, and West's statutory supplement (Selected Environmental Law Statutes) -- and any notes and outlines prepared by you. You may not use treatises, nutshells or other books. Good luck and enjoy your holidays while I am stuck grading exams!

QUESTION I (20 points)
The University of Maryland Medical School operates research laboratories that handle hazardous chemicals. EPA recently has been conducting surprise inspections of university research labs to determine if they are in compliance with the Resource Conservation and Recovery Act and the Community Right-to-Know Act. The agency has levied substantial fines against universities for hazardous waste violations. In hopes of avoiding similar penalties, the University of Maryland plans to conduct its own environmental audit of the labs prior to any EPA inspection.

Suppose that the university hires an independent auditor who performs the audit and finds that the university’s labs have not been complying with EPA’s regulations governing the proper storage and disposal of hazardous waste because the used chemicals are accumulating in unmarked containers that are retained indefinitely. The auditor reports these results only to the lab directors and the director of the university’s Environmental Health and Safety Office. The director of the Environmental Health and Safety Office then tells the lab directors to comply with RCRA regulations by marking the storage containers and periodically shipping the wastes to a licensed treatment, storage and disposal facility. The lab directors fail to change their practices and EPA ultimately cites them for RCRA violations after it conducts an inspection of the facilities.

(1) (4 points) (a) Can the university take advantage of EPA’s policy on Incentives for Self-Policing? Why or why not? If not, what would the university have to have done differently in order to be able to take advantage of this policy? (B) If the university succeeded in qualifying for the Incentives for Self-Policing, what benefits would this policy provide for the university?

(2) (2 points) If the professors running the labs testify that they were thinking about reusing some of the used chemicals in future laboratory experiments, can the university successfully defend against the charges that it violated RCRA?

(3) (4 points) (a) What generally must be proven to hold someone criminally liable for violating federal environmental laws? (b) Could any of the following be held criminally liable for the violations of RCRA: (i) the President of the University, (ii) the director of the university’s Environmental Health and Safety Office, (iii) the professors who operate the labs?

(4) (4 points) Suppose that the university ships the chemical wastes to a hazardous waste disposal facility licensed under RCRA Subtitle C. (a) If hazardous chemicals sent to the facility ultimately leak into the groundwater, can the university be held liable under CERCLA for cleanup costs? Why or why not? (b) Under what circumstances, if any, can the parent corporation of the company that owns the disposal facility be held liable under CERCLA for cleanup costs?

(5) (6 points) (a) Who, if anyone, would have standing to sue the university for violations of RCRA in a citizen suit? (b) What would they have to show to establish standing and how could they show it? (c) If the university corrects the violation and comes into compliance after the lawsuit is filed, would such citizens still have standing to sue?

QUESTION II (20 points)
The “precautionary principle,” which has become an important concept in the field of environmental law throughout the world, counsels that uncertainty should not be used as a reason for postponing measures to protect the environment against risks of serious or irreversible damage.

(1) (2 points) (a) How useful is the precautionary principle for the development of effective public policies to protect the environment? (b) Where can it be found in international environmental law?

(2) (18 points) In what respects, and to what extent, are the following domestic environmental laws consistent with the “precautionary principle”? Be as specific as possible:

(a) the Toxic Substances Control Act

(b) the Federal Insecticide, Fungicide and Rodenticide Act

(c) the Comprehensive Environmental Response, Compensation and Liability Act

(d) the federal Food, Drug and Cosmetic Act

(e) the Emergency Planning and Community-Right-to Know Act

(f) the Endangered Species Act

(g) the National Environmental Policy Act

(h) California’s Proposition 65

(i) the Clean Water Act
QUESTION III (20 points)

In this course we frequently have discussed principles of federalism, property rights, and standing to sue that flow in large part from provisions in the U.S. Constitution. We have examined how these constitutional principles can limit the ability of federal or state authorities to regulate certain activities and how they can restrict the ability of private parties to seek redress for activities that damage the environment or that violate regulatory statutes.

For each of the following constitutional doctrines or provisions of the U.S. Constitution, (1) explain what restrictions they impose that are relevant to environmental regulation and on whom they are imposed, and (2) assess how significantly each doctrine or provision actually has affected the implementation and enforcement of environmental law. Be as specific as possible.

(a) (4 points) the Fifth Amendment’s takings clause

(b) (4 points) Congress’s power to regulate interstate commerce

(c) (2 points) the Eleventh Amendment

(d) (2 points) principles of separation of powers and the non-delegation doctrine

(e) (2 points) Article III’s “case or controversy” requirement

(f) (2 points) the Tenth Amendment

(g) (2 points) Congress’s spending power

(h) (2 points) the equal protection clause of the Fourteenth Amendment