**Quiz 5**

**Question 1 - Why is it usually easier to use a “negligence per se” cause of action to establish liability as compared to using a “negligence” cause of action?**

It is easier to establish negligence per se cause of action because the statutes are strictly construed. Negligence only protects against harm intended rather than harm ensued. Often negligence claims are too general to be applied to a specific situation. In court negligence actions are sometimes excused under circumstances. It’s much easier to claim a nuisance, temporary harm, or permanent harm rather than negligence in court.

**Question 2 - What amount of oil spilled into navigable water (like a lake or river) is required before the responsible party needs to notify the EPA or other regulatory agency?**

Under the Federal Water Pollution Control Act / Clean Water Act any spill into navigable waters requires it be reported to the EPA or other appropriate regulatory agency. The exception is if the company receives a NPDES permit from the EPA.

**Question 3 - Texas Railroad Commission Rule 3.8(b) notes that "no person conducting activities subject to regulation by the commission may cause or allow pollution of the surface or subsurface waters of the state." Why have some courts not allowed this provision of the rules to be used to establish negligence per se?**

Under the scope section it states “cleanup requirements for hydrocarbon condensate spills and crude oil spills in sensitive areas will be determined on a case-by-case basis.” Because it is done case-by-case basis, it is not a definite way to win a negligence per se case simply because of a spill.

**Question 4 - Texas Railroad Commission Rule 3.14 dealing with plugging requires five days advance notice to the Texas Railroad Commission before plugging begins. Why would the Railroad Commission require advanced notice of plugging?**

The TRC requires this notice to properly approve the means of which they are going to plug the well. This is done for the protection of the environment.

**Question 5 - If the Railroad Commission adopts a new rule dealing with environmental protection, is it generally applied retroactively to the operator’s historical activities?**

Generally environmental protection related rulings are proactively applied. Environmental remediation laws in terms of super funds for example are retroactive.

**Question 6 - Why are the provisions in the Texas Railroad Commission rules similar in nature to what you find in Oklahoma, Arkansas, Wyoming, Montana, and Louisiana?**

The states listed above are the states with the highest production of oil and gas in the United States. They share the same case law and tend to share the same ideas of respect to rights for oil and gas.

**Question 7 - The "zone of death" or "circle of death" is slang or shorthand for regulations that deal with what regulated substance that may be deadly and may be found in a productive oil or gas well?**

Hydrogen sulfide.

**Question 8 - They Texas Railroad Commission's rules require pits used by operators to be closed within a given period. Why do they set these closure deadlines?**

The TRC requires that pits be filled for a multitude of reasons. The major reason is to prevent pollution with a secondary reason of record keeping so they know the pit has been closed.

**Question 9 - Extra credit.**

A barrel of beer contains 31 gallons. How many gallons are in a barrel of oil? **42 Gallons.** Why is there a difference? Because once you’re intoxicated you lose your ability to make sense. :)