CREATING LAWS & REGULATIONS

1. Law proposed by Member of Congress ("BILL")
2. If bill is approved by House AND Senate, goes to POTUS
3. POTUS: Sign / Veto / Pocket Veto] → FAILS
   - If signed: Becomes an "Act of Congress"
4. Act is standardized (language) by HOUSE and published in U.S. Code (U.S.C.)

MAKING THE "ACT" WORK:

- Law may be intentionally or unintentionally VAGUE or AMBIGUOUS

Ex: Speed limits on a given street.

- Law will be specific about WHAT AGENCY responsible

MOST ENV. LAWS → EPA

SOME SECTIONS, OTHERS

Clean Water Act: Section 404 Dredging Permits

↳ U.S. Army Corps of Engineers (with assistance and coordination of EPA)

"RULEMAKING" CREATION REGULATIONS

CONGRESS:

Via ACT - Gives general guidelines or specific GOALS

- Ex: "All navigable U.S. waters should be fishable and swimmable"

AGENCY:

Produces specific, detailed, often numerical or otherwise precise RULES that translate GENERAL MANDATE of ACT into a set of requirements.

- 1. PROPOSAL OF RULE
- 2. PUBLISH IN Federal Register FOR PUBLIC REVIEW
- 3. COMMENT PERIOD: public review and testimony. Also: Internal review
- 4. REVISION OF RULES based on COMMENTS
- 5. FINAL "PROMULGATION" by publication in CODE OF FED. REGULATIONS (CFR)

ENFORCEMENT OF REGS

Part I: The "Carrot"

GUIDANCE: "HOW TO"

&

POLICY: "SHOULD DO"

POLICY: Statements developed outlining official positions on a topic or instructions on procedures

GUIDANCE: Documents that give detailed instructions on how to implement requirements of the Act or specific regulations

Part II: The "stick" Agency Enforcement

- VOLUNTARY COMPLIANCE
- CIVIL SUITS & PENALTIES: Agreements, Settlements & fines
- CRIMINAL ACTION: fines, jail time

ENFORCEMENT (cont'd)

U.S. EPA
↕
State Agencies

"PRIMACY" (Federalism in action)

- Feds set the general regulatory framework and in many cases the exact rules
- States may write some of the actual regs as long as they MEET or EXCEDE the federal standards
- States normally in charge of enforcement actions

STATE PRIMACY NOW REQUIRED UNDER MOST ENVIRONMENTAL PROGRAMS

ENFORCEMENT: Alternate Route

- Agency fails to identify a problem or fails to act on it.
- An aggrieved party with legal "Standing" in the matter files suit
  E.g.: Northwest Environmental Advocates
  Friends of the Coast Fork
- State agency (and other regulators) are named as DEFENDANTS
  I.e. you SUE the State.
- Settles or is decided in court. Decision Directs the state re: what to do.
- State THEN goes after resp parties.

ENFORCEMENT (cont'd)

VOLUNTARY:
- Info disseminated
- Compliance expected
- Assistance offered
- Grants to local govt's, etc.

CIVIL ACTION:
- Agency identifies noncompliance
- Gives notice
- If no adequate response suit is filed
- May settle out of court
- May be decided (usually by judge. Ruling is issued.

(Usually handled in federal courts)

CRIMINAL: (where individuals identified AND EGREGIOUS

RCRA

THREE INTER-RELATED PROGRAMS

- SUBTITLE D: Non-hazardous solid waste program.
  I.e., municipal waste; "conventional" landfills
- SUBTITLE C: HAZARDOUS WASTE program. - Definitions
  - Handling wastes
  - Disposal facility
- SUBTITLE I:
  Underground Storage Tank Prgm (UST)
  - Specifically deals with details of USTs for haz. mats, petroleum

RCRA (for US)

- Defines what is HAZARDOUS
- Excludes pharmaceuticals, pesticides in certain contexts
- Focuses on CURRENT & FUTURE MANAGEMENT
- ON-GOING ENTERPRISES
- HAZ. WASTE CLEANUPS that are part of management of wastes

WHAT'S A HAZ. WASTE?

2 WAYS TO BE HAZARDOUS

1. By "LISTING": Defined as haz. waste
2. By "CHARACTERISTIC ATTRIBUTES"

The "Four Attributes"

- IGNITABLE - Flashpoint $< 60°C$
- CORROSIVE - $pH < 2$ $pH > 12.5$
- REACTIVE - Unstable or reactive w/ H_2O
- TOXIC - Extracted w/ acetic acid, then conc's of chemicals in extract $\geq$ Listed value
  → TCLP
  "Toxic Characteristic Leaching Procedure"

Table 1.
MAXIMUM CONCENTRATION OF CONTAMINANTS FOR TOXICITY CHARACTERISTIC

Contaminant	Regulatory Level (mg/L)
Arsenic	5.0
Barium	100.0
Benzene	0.5
Cadmium	1.0
Carbon tetrachloride	0.5
Chlordane	0.03
Chlorobenzene	100.0
Chloroform	6.0
Chromium	5.0
o-Cresol	200.0 [1]
m-Cresol	200.0 [1]
p-Cresol	200.0 [1]
Cresol	200.0 [1]
2,4-D	10.0
1,4-Dichlorobenzene	7.5
1,2-Dichloroethane	0.5
1,1-Dichloroethylene	0.7
2,4-Dinitrotoluene	0.13 [2]
Endrin	0.02
Heptachlor (and its hydroxide)	0.008
Hexachlorobenzene	0.13 [2]
Hexachloro-1,3-butadiene	0.5
Hexachloroethane	3.0
Lead	5.0
Lindane	0.4
Mercury	0.2
Methoxychlor	10.0
Methyl ethyl ketone	200.0
Nitrobenzene	2.0
Pentachlorophenol	100.0
Pyridine	5.0 [2]
Selenium	1.0
Silver	5.0
Tetrachloroethylene	0.7
Toxaphene	0.5
Trichloroethylene	0.5
2,4,5-Trichlorophenol	400.0
2,4,6-Trichlorophenol	2.0
2,4,5-TP (Silvex)	1.0
Vinyl chloride	0.2

[1] -- If o-, m-, and p-cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/L.

[2] -- Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.

LISTED WASTES

- SOURCE SPECIFIC
  E.g. - Wastewater Sludge
  - Wood-preserving Wastes
- GENERIC WASTES
  E.g. Solvents, acids
  Chemicals commonly used in process
- COMMERCIAL CHEMICAL PRODUCTS
  E.g. Benzene, creosote, Hg, pesticides

LISTED WASTES ALWAYS HAZARDOUS UNLESS MIXED WITH INERT MATERIAL & PASSES TCLP

RCRA Vs. CERCLA

- Cercla MORE COMPREHENSIVE (includes CWA, CAA, TSCA, FIFRA etc.
- RCRA "C" wastes can ALWAYS trigger CERCLA action
- RCRA "A" wastes do NOT

CERCLA

NOTIFICATION / DISCOVERY

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PRELIMINARY ASSESSMENT

↙ SITE INSPECTION (not immediate threat)

↘ INTERIM REMOVAL ACTION (Immed. threat)

↓

HAZARD RANKING SYSTEM

0 → 100

> 28.5 ⇒ LISTING

↓

National Priorities List (NPL)

↓

REMEDIAL INVESTIGATION (RI)

+

FEASIBILITY STUDY (FS)

↓

RECORD OF DECISION (RoD)

RoD

PRP: Potentially Responsible Parties

(RP) — " "

↓

REMEDIAL DESIGN (RD)

+

REMEDIAL ACTION (RA)

↓

OPERATION & MAINTENANCE

(O&M)

↓

COMPLIANCE CERTIFICATION

DELISTING