CREATING LAWS & REGULATIONS

1. Law proposed by Member of Congress ("Bill")
   - If bill is approved by House and Senate, goes to POTUS
   - POTUS: Sign Veto
     - Pocket Veto: Fails
     - If signed: Becomes an "Act of Congress"

2. 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

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: Agreement, settlement & fines
- Criminal Action: Fines, jail time
ENFORCEMENT (cont'd)

U.S. EPA

"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 EXCEED 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.
- Settlement or trial decided in Court. Decision Directs the State on what to do.
- State then goes after RESPONDENT.

ENFORCEMENT (cont'd)

VOLUNTARY:
- Info disseminated
  - Compliance expected
  - Assistance offered
  - Grants to local govs. 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 final.

CRIMINAL: Where individuals identified and egregious

RCRA

TWO 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 facilities

- SUBTITLE I: Underground Storage Tank Program (UST)
  - Specifically deals with details of USTs for haz. mats, petroleum, etc.
RCRA (for us)
- Define what is HAZARDOUS
- Exclude pharmaceuticals, pesticides in certain context
- Focus on CURRENT & FUTURE MANAGEMENT
- ON-GOING ENTERPRISES
- HAZ WASTE CLEANUP that are part of management of Wastey

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/ H2O
- TOXIC - Extracted w/ acetic acid, then conc's of chemicals in extract ≥ Listed Value

* Toxic Characteristics Leaching Procedure

<table>
<thead>
<tr>
<th>Contaminant</th>
<th>Regulatory Level (mg/L)</th>
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<tbody>
<tr>
<td>Benzine</td>
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<tr>
<td>Carbon</td>
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<tr>
<td>Chlordane</td>
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<tr>
<td>Chloroform</td>
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<td>Chorkon</td>
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<tr>
<td>n-Cresol</td>
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<tr>
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<td>500.0</td>
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<tr>
<td>p-Cresol</td>
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<tr>
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<tr>
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<tr>
<td>Lead</td>
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<tr>
<td>Vinyl chloride</td>
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1. If env. and p-cresol concentrations cannot be differentiated, the total cresol (DOC) 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
- Eg. Wastewater, Sludge - Wood-preserving Wastes
- GENERIC WASTES
- Eg. Solvents, acids - Chemicals commonly used in process
- COMMERCIAL CHEMICAL PRODUCTS
- Eg. Benzene, creosote, Hg, pesticides

LISTED WASTES ALWAYS HAZARDOUS UNLESS ALLIED WITH HAZARDOUS MATERIAL & PASSES TCLP
RCRA vs. CERCLA

- CERCLA more comprehensive (include CWA, CAA, TSCA, FIFRA, etc.)
- RCRA "C" waste can always trigger CERCLA action
- RCRA "K" waste do not

CERCLA

- Notification/Disclosure
  - Preliminary Assessment
    - Site Inspection
      - Site Assessment
        - Hazard Ranking System
          - 0 → 150
          - > 27.5 → Listing
    - Interim Removal Action
  - Removal Action
    - Feasibility Study (FS)
    - Record of Decision (ROD)

P.R.P.: Potentially Responsible Party (RP)

Remedial Design (RD)
Remedial Action (RA)
Operation & Maintenance (O&M)
Compliance Certification
De-listing