Sources of Environmental Law

1) Legislative Branch
   - Enact environmental laws by passing bills and budgets
2) Judicial Branch
   - Impact environmental laws through statute interpretation
3) Executive Branch
   - Proposes, supports, or opposes (veto) legislation
   - Treaties
   - Executive orders
4) Administrative (Agency) Law
   - Agency Rule Making (Regulation Promulgation)
   - Enforcement

How Are Agencies Created?

- The legislative branch creates most administrative agencies through statutes called enabling legislation.
- The enabling statutes delegate legislative power to agencies for the purpose of serving the public interest.
- The agency's rule-making authority is limited to that granted by the legislative branch.
- The legislative branch also delegates executive enforcement power to agencies to investigate potential regulation violations, and judicial power to settle or adjudicate disputes between agencies and the regulated community.

What is a Regulation??

a) A regulation is exactly like a law.

b) A regulation is different than a law.

c) A regulation is every rule, order, or standard of general application adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it.

Some Federal Agencies with Env. Responsibilities

- EPA
- Department of the Interior
  - Bureau of Land Management
  - U.S. Fish and Wildlife Service
  - National Park Service
- Department of Agriculture
  - U.S. Forest Service
- NOAA (Dept. of Commerce)
- OSHA (Department of Labor)
- Army Corps of Engineers

Some State/Local Agencies with Env. Responsibilities

- Cal/EPA – DTSC, CIWMB, ARB, SWRCB, DPR, OEHHA
- California Resources Agency – Dep't of Parks and Recreation, Dep't of Fish and Game, DWR, Dep't of Conservation, Dep't of Forestry and Fire Protection
- Air Resources Districts (BAAQMD)
- Pollution Control Districts (San Jose/Santa Clara Water Pollution Control District), Water Districts, (SCVWD), Santa Cruz Port District

Administrative Agencies

- Administrative agencies can have legislative (rule making), executive (enforcement) and judicial (see adjudication), powers
- Rule making
  - Must conform to APA (CA or Fed)
- Problems w/rule making
  - Objectivity
  - Uncertainty
- Adjudication
Rulemaking
• Administrative Procedure Act rulemaking procedures must be followed unless expressly exempted by statute from some or all of these requirements.
• APA requirements are designed to provide public with an opportunity to participate in the adoption of regulations and to ensure the creation of an adequate record for judicial review.

Effective Comments During Rulemaking
Effective comments on a proposed regulation are based on an understanding of:
✓ The statute(s) providing the agency authority
✓ Found in the Authority and Reference citations following the text of the proposed rule
✓ The factual material agency relies on
✓ Found in the initial statement of reasons
✓ The purpose of the proposed regulation
✓ Found in the initial statement of reasons
✓ The standards regulation must satisfy
✓ APA requires that a regulation must be easily understandable, have a rational, and be the least burdensome and effective alternative

Limitations on Agency Powers
• Statutory limitations
  – The Administrative Procedures Act (CA and Federal)
  – Freedom of Information Act (Federal)
  – Public Records Act (CA)
  – Government in Sunshine Act (CA)
  – Brown Act (CA)
• Institutional limitations
  – Executive branch
  – Legislative branch
  – Judicial Branch

Limitations on Agency Powers Legislative Branch
• Oversight Power
  – Annual oversight committee review
  – Investigative power
• Power to Terminate an Agency or Amend Enabling Statute
• Advice and Consent on Heads of Agencies
• Budgets

Limitations on Agency Powers Executive Branch
• Power to Appoint Heads of Agencies
  – Sets the agenda of the agency
  – Sets tone for rule making and violation enforcement
• Restricts Agencies through Budget Process
  – Reviews budgets and makes funding recommendations
• Issuance of Executive Orders

Limitations on Agency Powers Judicial Branch
• Overrule Agency Rule Making Functions
  – Arbitrary and capricious standard
  – Constitutionality
  – Agency’s authority
  – Violation of procedural requirements (underground regulation)