

## 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

## 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)