


Scope & Limits of Legal Authority



Lesson No. 4

ENV H 471
Environmental Health Regulation
Winter Quarter 2003

Lesson Objectives

Be able to:

- ❖ Determine the specific source of authority for a given EH program
- ❖ Delineate the scope (and limits) of the specific regulatory authority granted

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Lesson Overview

- ❖ Institutionalization of Legal Authority
- ❖ Delegation of Government Powers
- ❖ Limits to Governmental Powers

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Institutionalization

- ❖ **Federal Government**
 - **Division of powers**
 - **Separation of Powers**
 - **System of Checks and Balances**
- ❖ **State Governments**
- ❖ **Local Governments**

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Fig. 1 Matrix of Powers

	LEGISLATIVE	EXECUTIVE	JUDICIARY
FEDERAL	THE SO CALLED CONSTITUTIONALLY STIPULATED MATRIX OF GOVERNMENTAL POWERS: THAT IS, THE STRUCTURE OF GOVERNMENT IS FRAGMENTED, IN A SYSTEMATIC WAY, AGAINST THE TWO GREAT PRINCIPLES OF THE CONSTITUTION — THE SEPARATION OF POWERS AND THE DIVISION OF POWERS. THE PROCESSES OF GOVERNMENT ARE DICTATED BY THE "MATRIXING" OF ITS POWERS — INSTRUMENTAL VALUES (such as protection against tyranny) ARE GIVEN HIGHER PRIORITY THAN SUBSTANTIVE ONES (such as a maximally efficient postal system).		
STATE			
LOCAL			

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Fig. 2 Matrix of Powers

	LEGISLATIVE	EXECUTIVE	JUDICIARY
FEDERAL	Congress	President	Supreme Court Circuit Courts District Courts
STATE	Legislature	Governor	Supreme Court Courts of Appeal District Courts
LOCAL	City / County Council or Board of County Commissioners	Mayor / County Executive	Municipal Courts Magistrates Etc.

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Fig.3 Matrix of Powers

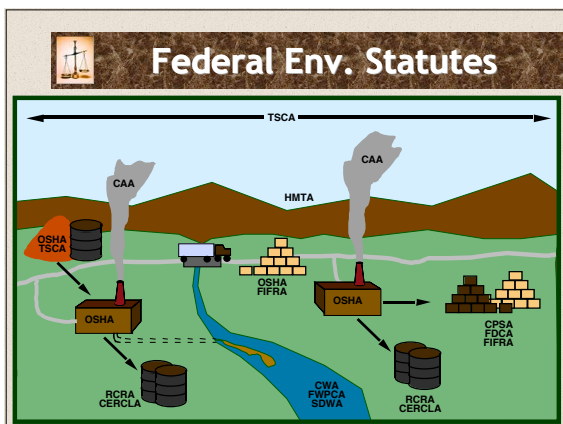
	LEGISLATIVE	EXECUTIVE	JUDICIARY
FEDERAL	Statutes (USC)	Rules & Regulations (CFR)	Opinions (US)
STATE	Statutes (RCW)	Rules & Regulations (WAC)	Opinions (Wn)
LOCAL	Ordinances	Rules & Regulations	Decisions

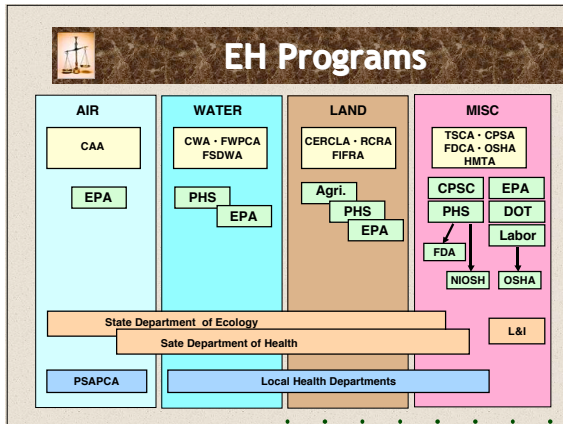
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Delegation of Powers

- ❖ Nature of Government Powers
- ❖ Sources of Government Powers
- ❖ Delegation: Process and Effect

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State PH Statutes

- ❖ 70.93 Waste reduction, recycling, and model litter control act.
- ❖ 70.94 Washington clean air act.
- ❖ 70.95 Solid waste management -- Reduction and recycling.
- ❖ 70.95A Pollution control -- Municipal bonding authority.
- ❖ 70.95B Domestic waste treatment plants -- Operators.
- ❖ 70.95C Waste reduction.
- ❖ 70.95D Solid waste incinerator and landfill operators.
- ❖ 70.95E Hazardous waste fees.
- ❖ 70.95F Labeling of plastics.
- ❖ 70.95G Packages containing met


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RCW 70.05.060

Powers and duties of local boards of health.


- Each local board of health shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction and shall:

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 **RCW 70.05.060** (Continued)

- (1) Enforce . . . the public health statutes of the state . . .
- (2) Supervise the maintenance of all health and sanitary measures
- (3) Enact such local rules and regulations . . . to preserve, promote and improve the public health . . .
- (4) Provide for the control and prevention of any dangerous, contagious, infectious disease . . .

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 **RCW 70.05.060** (Continued)


- (5) Provide for the prevention, control, and abatement of nuisances . . .
- (6) Make such reports to the state board of health as may [be] require[d]; and . . .
- (7) Establish fee schedules for issuing or renewing licenses or permits . . .

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 **Limits to Delegated Powers**


- ❖ **Constitutional**
 - **Due Process**
 - **Equal Protection**
- ❖ **Statutory**
- ❖ **Common Law**
- ❖ **Judicial Review**

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 **Assignment for Lesson 5**


- ❖ Grad: Chapter 14 -- Obtaining Information
- ❖ Buck: Chapter 5 -- Controlling Pollution ...
- ❖ Statutes: Various sections
- ❖ Readings:
 - #11 - *U.S. v. Tivian Laboratories* (Group C)
 - #12 - *U.S. v. Ouelette* (Group D)
 - #13 - *General Motors Corp. v. Director of NIOSH* (Group A)
- ❖ Due: January 30, 2003

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 **Cases**


- ❖ *Rollins v. Iberville Parish*, 317 So.2d. 1127 (1979).
- ❖ *Carey v. Westmoreland*, 415 A.2d. 333 (1980).
- ❖ *Yaffee v. Ft. Smith*, 178 Ark 406 (1928).

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 **Rollins v. Iberville Parish**


- ❖ Facts & Arguments
 - Who's suing whom, for what?
- ❖ Court History
- ❖ Legal Issues
 - Why?
- ❖ Decision
- ❖ Concurrence and/or Dissent
- ❖ Application

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 **Carey v. Westmoreland**


- ❖ Facts & Arguments
 - Who's suing whom, for what?
- ❖ Court History
- ❖ Legal Issues
 - Why?
- ❖ Decision
- ❖ Concurrence and/or Dissent
- ❖ Application

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 **Yaffee v. Ft. Smith**

- ❖ Facts & Arguments
 - Who's suing whom, for what?
- ❖ Court History
- ❖ Legal Issues
 - Why?
- ❖ Decision
- ❖ Concurrence and/or Dissent
- ❖ Application

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 **Next Lesson**

**Information:
Gathering &
Management**

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