

## **Lesson 5.**

# **LAW AND ENVIRONMENTAL HEALTH**

### **Introduction:**

This part of the course is intended to introduce students to the subject of law and regulation in the United States. It should provide an understanding of how law and the legal system affect the practice of environmental health. However, before we can begin to examine the subject of environmental health regulation, it is first necessary to establish a common framework within which our discussions can take place. That is, we must have an understanding of the activities which environmental health specialists -- whether a local or state sanitarian, an environmental protection specialist or a government industrial hygienist -- perform as a result of their position in a regulatory agency, which brings them into contact with law and the legal system.

We will begin by briefly discussing the nature of the activities which environmental health practitioners perform in the course of their employment which might bring them in to contact with the legal system and with legal questions. In succeeding lessons of the course we will explore in more depth the issues and concepts raised, and some of the laws, policies, methods and activities which affect, or have been affected, by these issues.

### **Lesson Objective:**

The major objectives of this lesson are to provide with:

1. a conceptual framework for understanding the basic nature of environmental health practice as it is conducted in health departments, environmental protection agencies and/or occupational health and safety organizations, and how questions of law affect the day-to-day activities of these agencies in our society; and,
2. a general understanding of, and an appreciation for, the development and evolution of our laws and legal system so that you can begin to understand why most of the issues with which we are involved are not matters of black and white, but rather varying shades of gray.

### **Key Points:**

#### **A. The Nature of Environmental Health Practice**

Environmental health programs and activities may be either consultative or regulatory in nature. Consultative programs are based on the environmental health specialist's knowledge of, and ability to explain, the interrelationships of biological, chemical and physical factors with the occurrence of disease and injury in human populations. Through advise and consultation the sanitarian educates and motivates people to adopt behaviors and practices which are more

conducive to health. There is a clear need and pressure for practitioners to participate in programs of this nature.

However, traditionally, and through legislative mandate, many if not most environmental health programs are regulatory in nature. As such the practitioners have been delegated both the authority and the responsibility to enforce applicable codes, statutes, ordinances and rules and regulations. Therefore, we will focus our attention in this course on the enforcement or regulatory aspect of environmental health rather than on the consultative activities.

1. Regulatory Approaches: The purpose of environmental health is to understand and control environmental factors which may have a deleterious effect on human health. In accomplishing this purpose, practitioners may use a number of different types of approaches. For example:

- Investigation of disease occurrence -- Epidemiology and determination of points of intervention
- Technology and engineering -- design and construction of systems, equipment, etc.; and,
- Regulation of use and behavior to prevent or eliminate conditions.

2. Procedures and Activities: Each of the basic approaches to controlling environmental health problems requires the use of a variety of specific activities and procedures. Some examples are:

- Surveys -- of neighborhoods, homes, individuals, etc.;
- Permits and licenses -- restaurants, swimming pools, waste disposal sites, etc.;
- Inspections and investigations -- of industries, restaurants, parks, houses, dairies, swimming pools, water supplies, etc;
- Collection of samples -- water, sewage, air, food, milk, consumer products; etc.; and,
- Conducting tests and measurements -- food temperatures, indoor and outdoor air, water, swimming pools, etc.

Many of these activities, if not conducted by a properly authorized government official, could be considered to be a restraint of trade, an invasion of privacy, trespass, an unlawful taking (stealing), or otherwise interfering with constitutionally protected property and/or personal rights.

How is it, then, that the sanitarian can engage in certain activities which would be considered criminal activities if conducted by someone else? The answer, of course, lies in the law, i.e., the sanitarian has been legally delegated the authority to exercise certain police powers of the state. [The nature of these police powers and how they are delegated will be taken up in future lessons.]

## **B. Relation to Law**

The field of law impacts environmental health programs in two ways. The first is through legislation which is drafted specifically to address an environmental or public health problem, e.g., The Clean Air Act. The second is through the procedural requirements of the Constitution,

existing laws, and the judicial decisions which govern the conduct of all regulatory and government activities. These procedural requirements may have been established through legislation or court cases which have no apparent relationship to environmental health, yet because of Constitutional, due process, equal protection and other considerations, they may directly and significantly affect the policies and procedures of the environmental health agency.

1. Legislation: Legislation is law, i.e., it is the written rules of conduct for society. Laws, as they are enacted by legislative bodies, usually do not spell out the specific activities which are to be conducted, nor the standards which are to be followed. Indeed in a number of instances where the Congress has attempted to proscribe procedures or standards, the effect has been to place the agency in an untenable position since they are thereby deprived of the flexibility necessary to accommodate new knowledge, changing conditions and/or special circumstances.

a. Statutes enacted by the federal Congress or state legislatures.

1) Enabling Legislation - grants authority to an agency to regulate activities or set standards.

2) Directing legislation - requires an agency to perform certain functions.

3) Appropriations - provides the funds to an agency so that it can perform certain activities.

b. Ordinances are enacted by units of local government (i.e., boards of county commissioners, city councils, etc.) and are comparable to statute.

c. Rules and regulations are adopted (promulgated) by administrative agencies and boards. When properly adopted, within the authority delegated to the agency or board by a legislative body, these also are law, although they are not legislation.

2. Procedural Requirements: Public health, and hence environmental health, is concerned with the prevention of disease and injury and the promotion of health. It is, therefore, a generally recognized and accepted "public good", and a legitimate concern of government. However, the public good can result in a conflict with an individual's privacy, property or other right protected by the Constitution. Therefore, there must be a balancing of the public and private interests. This balancing act takes place in the field of law.

In addition to the specific programs and activities which are authorized or required by law, there are a variety of requirements pertaining to how these programs and activities are conducted also apply. These may be derived from the Constitution, from other statutes such as the federal Administrative Procedures Act, or from Common Law Doctrines.

### C. Law and the Legal System in the United States

1. Sources of Law in the U.S.: Like almost all of the Western World, the United States is governed by a combination of two distinct systems of law:

- a. Statutory Law - Based essentially on Roman civil law. Came to the United States through successive changes -- decline and fall of the Roman Empire, rise of the medieval church, feudalism, Norman Conquest, rise of nationalism.
- b. English Common Law - Statutory law was often too general to be applied to particular cases. In England there developed a system of judges and courts to which people could appeal for justice from law.

These two basic systems are supplemented, in the United States, by another product of English jurisprudence known as equity. In the U.S. this system of equity, as a supplement to the written and common law, has been incorporated into the justice system. Few states, however, have separate equity courts. Usually the same court now sits as a court of law (dispensing strictly legal judgments) and as a court of equity (administering relief in cases for which the law, as it exists, offers no adequate remedy).

2. Current Composition of Law In the United States: The law in each state (except Louisiana which is based on the Napoleonic Code) consists of the U.S. Constitution, the individual State Constitutions, Statutes, and Common Law.

#### **D. Classifications of Law**

There are numerous ways to classify law, which leads to a variety of names which may be confusing to the casual reader. In all cases, the attempt is to divide the total body of law into smaller units which may be more readily conceptualized. Depending on the point of view of the person doing the classification, these smaller units may have a number of names, and often the same name is used by different authors with a slightly different meaning.

##### 1. By origin:

- a. Constitutional Law - law developed by specially designated bodies or legislatures convened for the purpose of framing or amending a constitution.
- b. Statutory Law - legislation that arises from either representative assemblies (legislatures) or by the process of initiatives and referendums.
- c. Administrative Law - the rules, regulations, standards, orders, etc. issued by executive or administrative boards or officers; written within the sphere of their legal competence and responsibility.
- d. Common Law - derived from custom (in England) and the decisions made by courts in specific cases.

##### 2. By function:

- a. Substantive Law - the rules and requirements of conduct.
- b. Procedural Law - tells how to bring a lawsuit and how to prosecute.

c. Remedial Law - the remedies (sanctions) available for breaches of the law.

3. By application:

a. Public Law - that branch of law which is concerned with the establishment, maintenance and operation of government; the definitions, relationships and regulations of its various branches; and the relationship of the individual or of groups to the state.

b. Private Law - that branch of law which is concerned with rights and duties of individuals and groups in relation to each other; originally based largely on Common Law, but increasingly subject to statutes.

### **Lesson Assignment:**

1. Read:

a. Supplementary Reading #1 -- Senn, Charles, "Environmental Sanitation Control", Public Health Reports, 79(8):683-688.

b. Supplementary Reading #2 -- Treser CD, Sikora VA. An Outline of the Development of Environmental Laws

c. Supplementary Reading #3 -- Janssen WF. The Constitution and the Consumer: Discovering the Connections, AF&DO, June 1987.

2. Suggested Additional Readings

a. Freedman, Ben, "Public Health and the Sanitarian's Work", Chapter III in The Sanitarian's Handbook [4th Ed.], Peerless Publishing Co., New Orleans, 1977, pp. 21-34.

b. Grad, Frank P., "An Effective Enforcement Program", American Journal of Public Health, 1969, 59(6):947-952.

c. Salvato, Joseph A., "Administration", Chapter 12 in Environmental Engineering and Sanitation [3rd Ed.], J. Wiley & Sons, Inc., New York, 1982, pp. 1026-1089.

### **Study Questions:**

1. In your own words, define each of the terms listed below. Explain what these terms mean to you as they may be used in, or related to, the practice of environmental health. The point of this exercise is not to see if you can use a dictionary, but rather to provide insights into your conceptual framework.

a. Law

b. Statute

c. Regulation

d. Police Power

2. A department of environmental health, industrial hygiene or environmental protection is an administrative agency. Using your own agency to illustrate your answer (by providing specific examples) answer the following questions. If you are not currently employed by a government agency, use one with which you are most familiar.

a. In terms of law, what does it mean that an your department is an administrative agency?

b. Why have such agencies been created?

c. What is(are) their greatest strength(s)?

d. What dangers might they present to public and/or private rights?

3. There are several accepted ways of classifying law. The classification scheme often depends upon the point of view or purpose of the person developing or using it. Since it assumed that you are currently, or are studying to be, a public health practitioner, it is important that you have a basic understanding of the various types of laws with which environmental health practitioners are involved and how they are use. Define each of following types of law and explain its use in, or importance to, the practice of environmental health. Use at least on example to illustrate your response.

a. Administrative law

b. Common law

c. Constitutional law

d. Statutory law

4. If, as we have suggested, the law is continually changing, how is it then that "the law" is the major societal instrument for ensuring order in the United States? In other words, what is the attribute of American law which permits these changes to take place without disrupting society?