

# Developing Tribal Environmental Codes

**PRESENTED BY:**

**Josh Simmons**

**Principal Consultant / Attorney**

**[www.Prospersustainably.com](http://www.Prospersustainably.com)**

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# Basic Definitions

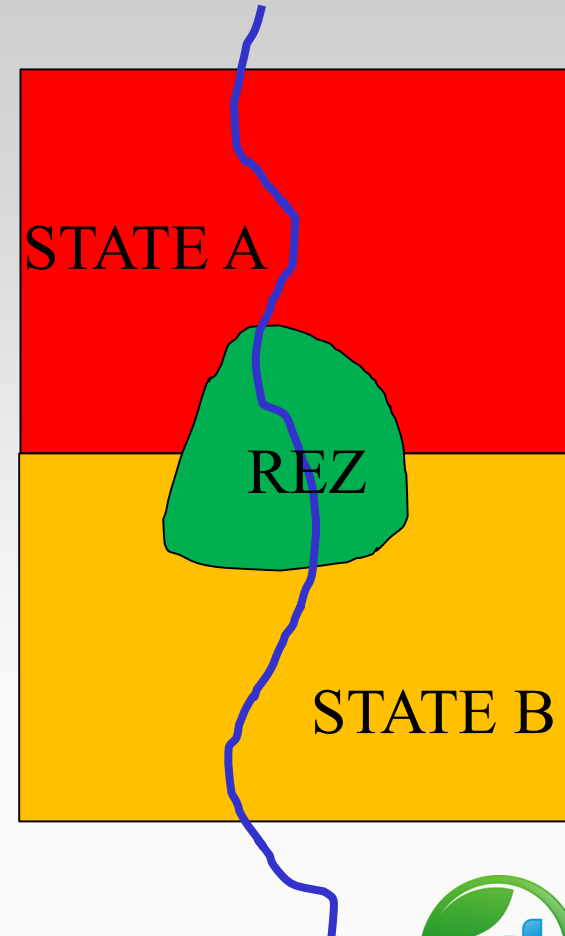
- **Ordinance** – a binding law passed by the legislature or governing body
  - Addresses a particular subject or issue
  - AKA – Statute
- **Regulation** – rules enacted by an administering body pursuant to a governing ordinance
  - Rules, procedures, and other guidance can be directly included in the ordinance or code

# Basic Definitions

- Code – a collection of laws, usually arranged systematically
  - Can be a collection of Tribal ordinances
- Resolution – a formal expression of a decision made by an official body
  - Doesn't always have the force of law
- Case Law – court reported interpretations of the law that serve as legal precedence
  - Only binding on that court's jurisdiction

# Environmental Laws

- Who enacts?
- Where does it apply?
  - Federal Laws / Regs
    - Congress / Fed Agencies
    - Inside/outside Rez
  - State Laws / Regs
    - State Legislature / Agencies
    - Outside Rez
  - Tribal Laws / Regs
    - Tribe
    - Inside Rez



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# Federal Env Laws

- **Adopted by Federal Government**
- **Apply within Reservation**
- **Minimum legal requirements**
- **Administered by Federal Agencies**
- **Treatment as State (TAS)**
  - **aka Treatment in the Same Manner as a State**
    - [www.epa.gov/tribalportal/laws/tas.htm](http://www.epa.gov/tribalportal/laws/tas.htm)
  - **CAA, CWA, SDWA, TSCA, FIFRA, CERCLA**
    - Does not apply to RCRA
  - **Jurisdictional implications**
  - **May not be appropriate for your Tribe**

# TAS – CWA

- **TAS Authority - § 518(e)**
  - **Prerequisite Requirements**
    - **Governing body**
    - **Jurisdiction over water resources**
  
- **Applicable Programs (CWA §)**
  - **104 – Research, Investigations, Training**
  - **106 – Grant for Pollution Control Progs.**
  - **303 – WQS and Implementation Plans**
  - **305 – State Reports on Water Quality**

# TAS – CWA

- **Applicable Programs (CWA §)**
  - **308 – Records and Report; Inspections**
  - **309 – Enforcement**
  - **314 – Clean Lakes**
  - **319 – NPS Management Programs**
  - **401 – Certification**
  - **402 – NPDES**
  - **404 – Dredge and Fill Permits**
  - **406 – Coastal Recreation WQ Monitoring**



# TAS – CAA

- **Prerequisite Requirements (§ 301)**
  - **Governing body**
  - **Jurisdiction over air resources is assumed**
- **TAS Authorities**
  - **Implementation Plan**
  - **Enforcement Powers**
  - **Change or dispute designations**

# RCRA

- **RCRA – Resource Conservation and Recovery Act**
  - **Tribes = Municipalities (no TAS provisions)**
  - **EPA has limited enforcement authority on Tribal Lands**
  - **Minimum waste mgmt requirements**
    - **Subtitle C – Hazardous Waste Program**
    - **Subtitle D – Solid Waste Program**
    - **Subtitle I – Underground Storage Tank Program**

# CERCLA

- **CERCLA – Comprehensive Environmental Response, Compensation, and Liability Act**
  - Cleanup and liability for abandoned or uncontrolled hazardous waste sites and emergency releases
- **Limited TAS Authorities**
- **Voluntary Tribal Response Programs**
  - Section 128a TRPs
  - Doesn't require TAS

# State Laws

- **Adopted by State Government**
- **Typically don't apply on Reservation**
- **General Exceptions\***
  - **Congress authorizes**
  - **Tribal-State Agreement**
  - **Tribe authorizes**
  - **Adoption of state laws by reference**
  - **Inter-jurisdictional activities/impacts**

# Tribal Laws

- **Adopted by Tribal Government**
  - Unique to each Tribe
- **Apply to Tribal Lands within Reservation boundaries**
  - Jurisdictional implications
- **Must comply with federal laws**
- **Can address a range of env. issues**

# Jurisdictional Issues

- Ability to enforce laws in a particular court of law
- Subject Matter Jurisdiction
  - Power over subject matter
    - Criminal – prosecution by government for an act or omission
    - Civil – suit by private party seeking redress for injury to a private right
    - Administrative – hearing, inquiry, investigation, or trial before an administrative agency

# Jurisdictional Issues

## ➤ Territorial Jurisdiction

- Power over particular territories
- Indian Country (18 USC § 1151)

## ➤ Personal Jurisdiction

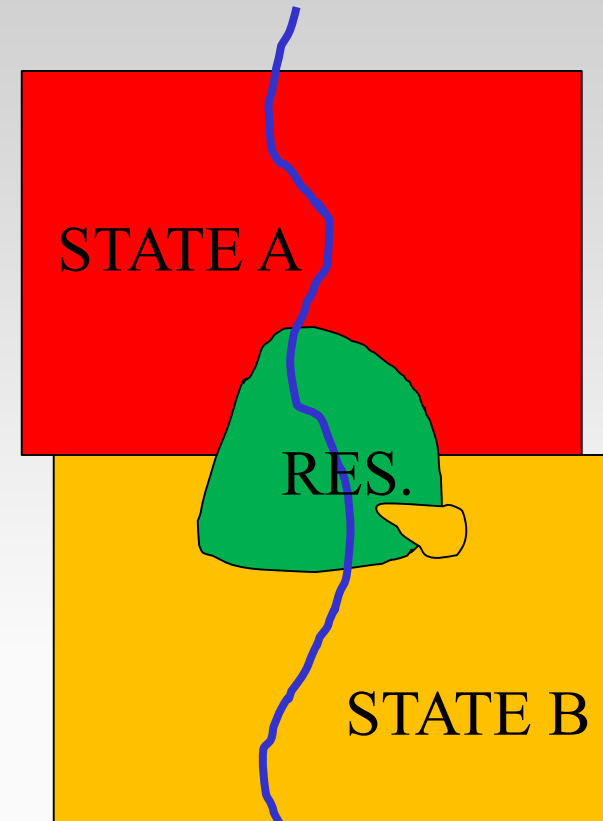
- Power over particular parties
- Limitations on power of Tribe over non-members

# Jurisdictional Issues

## Nonmembers & Non-Tribal Lands

- **Lands w/in Res**
  - Direct effect on Tribe's health or welfare\*
- **Lands outside Res**
  - Stricter Standards (TAS authority)
- **State Laws on Res**
  - Stricter Standards
  - Public Law 280

[www.aidainc.net/Publications/pl280.htm](http://www.aidainc.net/Publications/pl280.htm)



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# Tribal Env Law Development Steps

- **Identify Environmental Issues and Objectives**
- **Consider Tribal Resources**
  - **Including Enforcement Capabilities**
- **Review Tribal Constitution and other governing documents**
- **Research and Review Similar Laws**
  - **Including your own tribe's laws**
- **Draft or Revise Tribal Waste Law**
- **Public Presentation & Review**
- **Legal Review**
- **Enact Tribal Waste Law**

# Identifying Issues & Objectives

- **Specific or General**
- **Current & Potential Env. Issues**
- **Community Objectives for Resources**
- **Methods for Identifying Issues & Obj:**
  - **Community Surveys / Workshops**
  - **Interviews**
  - **Assessments**
  - **Resource Management Plans**
- **First opportunity to engage tribal community – USE IT WELL**

# Identifying Environmental Law Issues & Objectives

- **Area Specific Issues and Objectives**
  - E.g. Open Burning, Roadside Illegal Dumping
- **General Issues and Objectives**
  - These can be cultural, social, economic, etc.
    - As they relate to environmental laws and management
  - E.g. Workforce Development

# Enforcing Tribal Env Laws

- **Consider Other Options for Addressing Environmental Issues and Objectives**
  - **Instead of Enforcement of Tribal Env Laws**
    - This can include other legal and non-legal means
  - **E.g. Community Education & Outreach**

# Implementing Tribal Env Laws Available & Needed Resources

- **Consider Enforcement Options for Tribal Env Laws**
  - E.g. Penalties & Remedies
- **Consider Available and Needed Resources for Implementation and Enforcement of Tribal Env Laws**
  - Including methods for Identifying Available & Needed Resources

# Conducting Research Tribal Environmental Laws

- Review Tribal Constitution and other governing laws/documents
  - Articles of Organization, Treaties, Tribal-State Compacts, etc.
- Review Tribal Laws – from your own tribe
  - Look for Potential Conflicts, Model Language/Provisions/Sections, etc.
- Review Similar Env Laws – from other tribes and municipalities
  - Models/Templates, Language, Provisions, Sections
  - Note relevance (contact other tribes/municipalities for feedback)
- Tribal Env Law Development Resources Document
- Maintain a Research Log for Initial Research (see worksheet)
- Review Relevant Laws and Templates in Detail (see worksheet)

# Drafting Your Tribal Env Law

- **Review Relevant Laws and Templates in Detail**
  - Identify useful language, provisions, and sections
- **Create an Outline of Sections for your Tribal Env Law**
- **Cut and Paste Language, Provisions, and Sections into the Outline**
  - The fewer models/templates you use the better
  - Edit language as needed
- **Review and Revise Drafts**
  - Legal Review
- **Optional: Simultaneous research, review, and draft**

# Thank You! Questions?

[jsimmons@prospersustainably.com](mailto:jsimmons@prospersustainably.com)

(805) 694-8089 (office) / (805) 617-5685 (cell)

