



Minnesota CLE Webinar Complying with Environmental Laws

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Discussion Topics

- I. Sources of Environmental Law/ Enforcement Authority**
- II. Responding to Government Authorities**
- III. Enforcement Toolbox**
- IV. Environmental Audits and Environmental Management Systems**

Environmental Authority

- **Federal**
- **State**
- **Regional**
- **Local**

Environmental Statutes

- **Clean Air Act (CAA)**
- **Clean Water Act (CWA)**
- **Resource Conservation and Recovery Act (RCRA)**
- **Emergency Planning and Community
Right to Know Act (EPCRA)**
- **Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)**
- **Toxic Substances Control Act**
- **Safe Drinking Water Act**

Environmental Statutes (continued)

- **Homeland Security**
- **Proposition 65 – California**
- **Lead-based Paint – Tenant Notification**
- **Federal Delegation to States**
- **Independent State Authority to Regulate Pollution**
- **State Delegation to Regional or Local Authorities**

Sources of Environmental Law

A. Federal Statutes and Regulations

1. CERCLA, Clean Air Act, Clean Water Act, RCRA, EPCRA, TSCA, FIFRA

B. State Statutes and Regulations

1. MERLA, Minnesota Environmental Statutes Chs. 115 and 116, Air, Water, Solid and Hazardous Wastes, Tanks

C. Local Ordinances

1. Hazardous Wastes (Seven County Metro), MCES Industrial Wastewater, Conditional Use Permits

Sources of Environmental Regulations

- **Statutes**
- **Rules and Regulations**
- **Permit Terms and Conditions**

Rules and Regulations

- **Code of Federal Regulations**
- **Minnesota Rules**
- **Local Ordinances**

Permits

- **Air Quality**
- **Industrial Wastewater**
- **Stormwater**
- **Hazardous Waste Generator**
- **Underground Injection Control**
- **Solid Waste**

Permits

- **Air Quality**
 - Federal- Title V
 - State
 - FESOP- Synthetic Minor
 - Standard
 - Registration

Permits

- **Industrial Wastewater**
 - Federal
 - NPDES
 - Categorical Pre-Treatment Standards
 - MPCA
 - Local Sewer Authority

Permits

- **Stormwater**
 - Federal
 - State

Permits

- **Hazardous Waste Generator**
 - Federal
 - State
 - Local

Permits

- **Pre-Approvals Needed Before Improvements Made**
- **Terms and Conditions**
- **Emission or Effluent Standards**
- **Reporting Requirements**

How Do Violations Arise?

- **Complaints**
Citizens/Employees/Neighbors/Competitors
- **Routine Agency Programmatic Inspections**
- **Self-Reporting**
- **Agency Record Review**
- **Response to Spill/Release**
- **Deal Due Diligence**

Enforcement Options

- **Administrative**
- **Civil Enforcement**
- **Criminal Enforcement**

Federal Administrative Penalty Authority

- **Administrative Penalties**
- **Informal Actions**
- **Request for a Hearing**
- **US EPA's Consolidated Rules of Practice**

State Administrative Penalty Authority

- **Notice of Violation**
- **Alleged Violations Letter**
- **Administrative Penalty Order**
- **Stipulation Agreement**
- **Notice of Violation (NOV)**
- **Alleged Violations Letter (AVL)**
- **Request for Information (RFI)**

State Administrative Penalty Authority (continued)

- **Administrative Penalty Order (APO)**
- **Minnesota Statute 116.072**
 - Forgivable/Nonforgivable
 - Corrective Actions
 - Generally Not Negotiable
- **Administrative Penalty Order Appeal Options**
 - Administrative Law Judge
 - District Court

State Administrative Penalty Authority (continued)

- **Stipulation Agreement**
 - Civil Penalty Determination Process
 - Negotiation
 - Press Release
- **SEC Reporting**
 - Penalties above threshold need to be reported

Local Ordinance Authority

- **Citation**
- **Order Authority**
- **Criminal Referral**
- **Referral to State or Federal Authorities**

Civil Action

- **Federal Court**
- **State Court**
- **Civil Penalties**
- **Injunctive Relief**
- **Attorneys Fees**
- **Adjudication**
- **Resolution – Consent Decree**

Criminal Prosecution

- **Who is the Prosecutor?**
 - Federal – United States Attorney**
 - State – Attorney General's Office**
 - Local – County Attorney**
- **Knowing Violations**
- **Minnesota Statute 609.671**

Criminal Prosecution (continued)

- **Corporate Defendants**
- **Individual Defendants**
- **Responsible Corporate Officer**

Federal Enforcement Trends

- **Enforcement in the Trump Era**
- **Enforcement Policies**
- **Supplemental Environmental Projects (SEPs)**
- **Use of Guidance**

State Enforcement Trends

- **Increasing Use of Administrative Penalty Orders**
- **More Infrequent Inspections**
- **Multi-media Inspections**

State Enforcement Trends

- **INSERT BAR GRAPH**

Compliance Issues in Business Transactions

- **Warranties and Representations**
 - Compliance with Environmental Laws
 - Assessing Compliance Status
 - Curing Deficiencies
 - Permit Transfers
- **Indemnity and Undertaking**

Environmental Audits

- **Assess Compliance Status with Environmental, Health and Safety Requirements**
- **Conduct Under Attorney-Client Privilege**
- **Handling Audit Findings**

Audit Protections

- **U.S. Environmental Protection Agency Policies**
- **State Audit Policies**

Environmental Management Systems

- **Systematic Review of Compliance**
- **Incorporate Periodic Audits**
- **Consider Including OSHA Review to Cover Worker Compensation Claim Liability**

Questions?

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