

Update on Agency Enforcement

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Prosecuting Federal Environmental Crimes in the District of Minnesota

Introduction to Potential Prosecution Team Members

Most Frequently Prosecuted Statutes

Examples of Past Prosecutions in Minnesota

Special Considerations for Environmental Prosecutions

DOJ Prosecuting Entities

- ▶ **U.S. Attorney's Office for the District of Minnesota (Minneapolis)**
 - ▶ Primary responsibility for the investigation and prosecution of environmental crimes within the District of Minnesota.
- ▶ **DOJ Environment & Natural Resources Division, Environmental Crimes Section (DC, Denver field office)**
 - ▶ Primary responsibility for the investigation and prosecution of environmental crimes on a nationwide basis.
- ▶ **Joint Prosecution**
 - ▶ Coordination is encouraged in cases involving novel issues of law, simultaneous investigations in multiple districts, international or foreign policy implications, and sensitive and urgent matters.

Environmental Crimes

▶ Pollution

- ▶ Clean Water Act, Clean Air Act, Resource Conservation & Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

▶ Wildlife

- ▶ Lacey Act, Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), Bald & Golden Eagle Protection Act (BGEPA)

▶ Animal Welfare

- ▶ Animal Welfare Act, Horse Protection Act, Humane Methods of Livestock Slaughter Act, The 28-Hour Law, Preventing Animal Cruelty and Torture (PACT) Act, Animal Fighting Venture Prohibition Act

- ▶ Complete List: <https://www.justice.gov/enrd/federal-environmental-crimes-statute>

Nationwide Statistics

- ▶ From 1998-2014:
 - ▶ Charged and resolved cases against 1,083 individuals and 404 corporate defendants,
 - ▶ Sentences resulted in 774 years of incarceration and \$825 million in criminal fines and restitution
- ▶ Example: Operation Crash
 - ▶ More than 50 convictions from 2011-2017
 - ▶ Seized more than \$75 million of elephant ivory and rhino horns
 - ▶ Several subspecies of rhinos have seen their population numbers steadily increase since 2013



Law Enforcement Partners

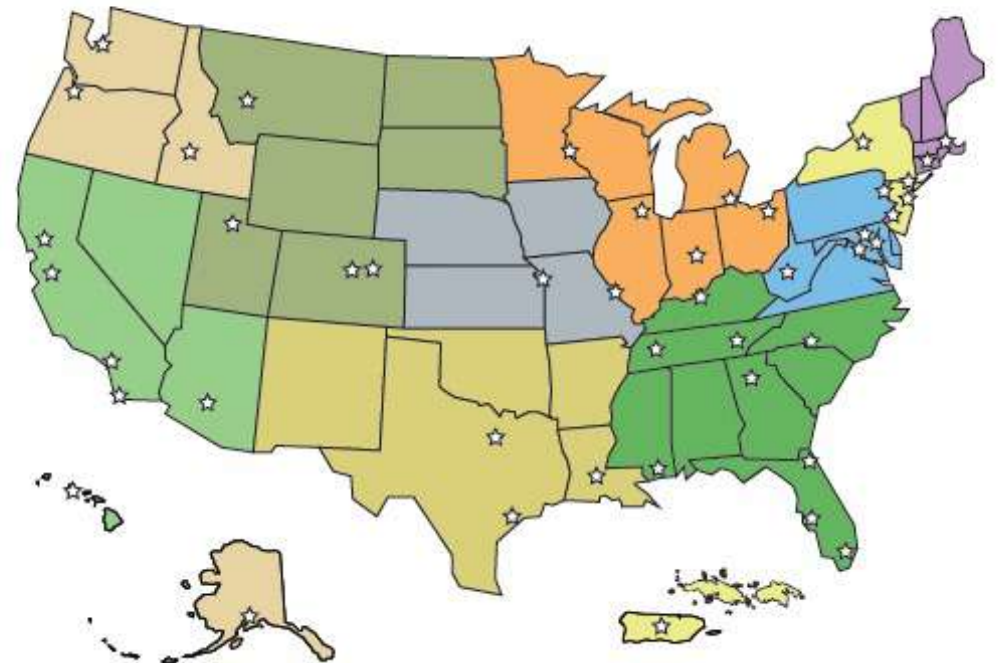


EPA Criminal Investigation Division

- ▶ 200 special agents across the country, 2 of whom are based in Minneapolis
- ▶ Goals of prosecution:
 - ▶ deter other potential violators
 - ▶ eliminate the temptation for companies to “pay to pollute”
 - ▶ help ensure that businesses that follow the rules don’t face unfair competition from those that break the rules
- ▶ Of charged defendants 80% are individuals, 20% are corporations

EPA CRIMINAL ENFORCEMENT OFFICES

Different colors represent EPA Regions



Fish & Wildlife Services

- ▶ 131 special agents nationwide, 4 agents located in St. Paul and Duluth
- ▶ Priorities:
 - ▶ Commercial trafficking in protected plants and wildlife, with highest priority given to threatened and endangered species
 - ▶ Unlawful take and/or habitat destruction by environmental contaminants or industrial hazards
 - ▶ Enforcement of federal laws and regulations related to federally listed threatened, endangered, or injurious species

Examples of Recent D. Minn. Prosecutions

- ▶ *United States v. MST Mineraliens Schiffahrt Spedition Und Transport GMBH*, No. 16-cr-134 (JNE/LIB)
 - ▶ Defendant shipping company pleading guilty to APPS violation, 33 U.S.C. § 1908(a), for falsifying oil record book. The company was sentenced to 3 years of probation (which it violated), and ordered to pay a fine of \$800,000 and a community service payment of \$200,000
- ▶ *United States v. Svercl*, 18-cr-144 (PJS/TNL)
 - ▶ Defendant pleaded guilty to knowingly storing and disposing of hazardous materials (cathode ray tubes) in violation of RCRA, 42 U.S.C. § 6928(d)(2)(A), and was sentenced to probation.
- ▶ *United States v. Vargas*, 18-cr-188 (PJS/DTS)
 - ▶ Defendant trafficked in North American box turtles, sending them to China and Hong Kong, in violation of the Lacey Act, 16 U.S.C. 3372(d)(2) & 3373(d)(3)(A)(i). Defendant was sentenced to probation and \$2,374 in restitution.



Special Considerations

- ▶ Parallel proceedings
 - ▶ Following DOJ policies on parallel civil and criminal proceedings
 - ▶ Ensuring compliance with Fed. R. Crim. P. 6(e)
- ▶ Efficient use of limited resources
 - ▶ Fewer agents devoted to environmental investigations
 - ▶ Laboratories/forensic specialists often located out of state
- ▶ Sentencing considerations
 - ▶ Low Guidelines sentences/fines compared to Title 18 crimes
- ▶ Availability of restitution for victims

Global Resolutions

- ▶ *United States v. Sik*, 20-cr-225 (SRN/DTS)
 - ▶ Defendants were shooting a rifle for fun and decided to shoot an oil pipeline, which perforated and spilled almost 4,000 gallons of oil into a tributary of the Yellow Medicine River.
 - ▶ Investigated by local authorities, EPA, and DOT (PHMSA)
 - ▶ Reached a global resolution wherein defendants pleaded guilty to felony criminal destruction of property in state court and misdemeanor violation of CWA, 33 U.S.C. §§ 1311(a) & 1319(c)(1)(A), in federal court
 - ▶ Sentencing and contested restitution hearing to be scheduled



Agency Inspections - *Evolving Methods*



Onsite Inspections

Virtual Inspections (+)
Document Request

Which Targets? - Use of AI and EJ
Tools

Which Targets?

Artificial Intelligence and Environmental Justice Tools

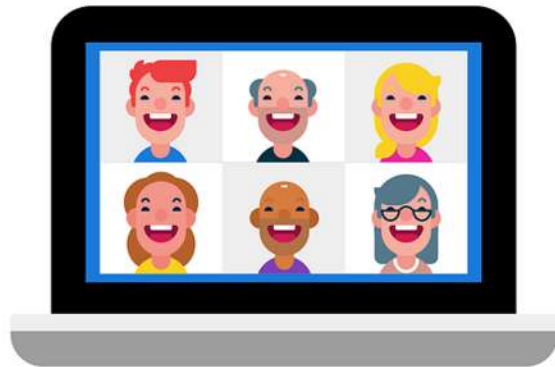
▶ Artificial Intelligence (AI)

- ▶ States reviewing AI potential, to boost enforcement by more efficiently ID'ing facilities for inspections
- ▶ Especially useful for Air and Water - Satellite imagery indicating
 - ▶ Development on wetlands
 - ▶ CAFO without permits
- ▶ March 16, 2021 Presentation to Environmental Council of States (ECOS)
 - ▶ Daniel Ho, Stanford Law, outlined the university's program on AI for environmental compliance
 - ▶ A "game changer"
 - ▶ Can dramatically increase the efficiency of states' enforcement efforts
 - ▶ Send inspectors where most needed

▶ Environmental Justice (EJ)

- ▶ EJ 2020 Action Agenda: USEPA to Integrate EJ into all Work
- ▶ Tool - EJScreen - What it Can Do
 - ▶ Proximity analysis to show demographics w/in 3 miles of power plants in US. Shows higher percentage of lower income communities living near power plants.
 - ▶ Facilitate Community Outreach: Superfund, permits for existing or new facilities
 - ▶ Prioritize communities for USEPA's enforcement initiatives - eNGOs can follow-up suit, or direct resources elsewhere
- ▶ New Tool - Climate and Environmental Justice Screening Tool, builds off EPA's EJScreen, to identify disadvantaged communities, support the Justice40 Initiative, and inform equitable decision across govt
- ▶ USEPA Enforcement Activity to Increase from FY2020
 - ▶ But FY2020 was surprisingly active - e.g., USEPA opened 247 new criminal cases, 77 more than in FY2019 and the most since FY2014

Virtual Inspections



- ▣ Pre-Pandemic In-Person Inspections
 - ▣ 3 inspectors/car
 - ▣ Close contact w/facility personnel; opening & closing conferences
 - ▣ Doc review/copies; follow-up doc requests and correspondence
- ▣ Shift During Pandemic
 - ▣ More doc requests ahead of visits
 - ▣ Virtual site tours (pre-recorded, live video, photo series) - more people can attend; no travel time; easier to schedule
 - ▣ Issue virtual inspection report
 - ▣ Follow-up doc requests and correspondence

Predictions Post-Pandemic

- ▣ Continued use of some virtual inspections, allowing for increased # of inspections
- ▣ Hybrid approach - heavier upfront doc requests, initial video tour, documents via screen-sharing, closing conference, then onsite if warranted
- ▣ ECOS & USEPA Pilot Remote Video Compliance Inspections, 2020-2021
 - ▣ Workgroup for states and regions to share information on remote inspections & developing key documents
 - ▣ Standard operating procedures and facility notice templates
 - ▣ Members include representatives from USEPA HQ; the 10 EPA regions; state environmental agencies in Alaska, Arkansas, Colorado, Connecticut, Iowa, Louisiana, Maryland, Mississippi, Nebraska, New Jersey, Nevada, and South Carolina; and the District of Columbia

Virtual Inspections - Recent Examples

- ❑ Proactive - Suggest eNGO with inspection rights under federal consent decree conduct annual audit by video (reduce facility operational impacts, protect employee health, reduce travel time/costs)
 - ❑ Con: miss opportunity to build goodwill with counterparty
- ❑ Employee Complaint to Ohio EPA re: EH&S issues
 - ❑ OEPA notified facility it will do an onsite or virtual inspection -need to prepare for each on little notice
- ❑ California Agencies (CalEPA, counties, cities, etc.) - Offering facilities the option - drones, video, photos, drive through, and desktop inspections uploaded to a database.
- ❑ USEPA Region 2 TRI Inspection - All by email and video correspondence, multiple rounds of video conferences, document exchanges = time consuming



Proactive Recommendations

- ❓ Prioritize compliance efforts at higher risk facilities
- ❓ Consider proactive projects to improve status at those facilities, relevant to EJ factors
- ❓ Have some ideas lined up in the event of an enforcement action, with injunctive requirements
- ❓ Target community giving campaigns
- ❓ Learn to Use EJScreen & evolving tools
- ❓ Consider public's knowledge of your operations (e.g., satellite imagery, online research, eNGO information)

- ▶ Guidelines for Any Agency Inspection - see course handout Quick Hit

Environmental Quick Hit

Tips for Government Inspections

Before the Inspection

- Compare USEPA's Environmental Justice communities/focal areas (water, air, etc.) to company locations to identify potential hot spots for inspections
- Develop a list of internal business and corporate stakeholders who may need to be contacted in the event of an inspection
- Try to determine the scope/purpose of the inspection; narrow the scope if possible
- Identify personnel responsible for the relevant regulatory requirements/permits and related operations
- Gather the relevant documents that fall within the inspection scope, and separate and secure any legally privileged documents (for permit inspections, include all documents required to be maintained by the permit (typically 3-5 year lookback) and agency correspondence)
- Setup a meeting room for opening and closing conferences, with all documents well organized and personnel familiar with the scope of the documents
- Identify an employee to lead the inspection, and those to

Need More?

Online Resources

- [USEPA Compliance Monitoring Overview](#)
- [USEPA 2020-2023 National Compliance Initiatives](#)
- [USEPA EJ 2020 Action Agenda](#)
- [USEPA EJScreen Tool](#)
- [Minnesota PCA Compliance & Enforcement Overview](#)
- [What to Expect from Environmental Compliance Inspection \(Illinois\)](#)

Sources of Alleged Violations

Complaints

Inspections

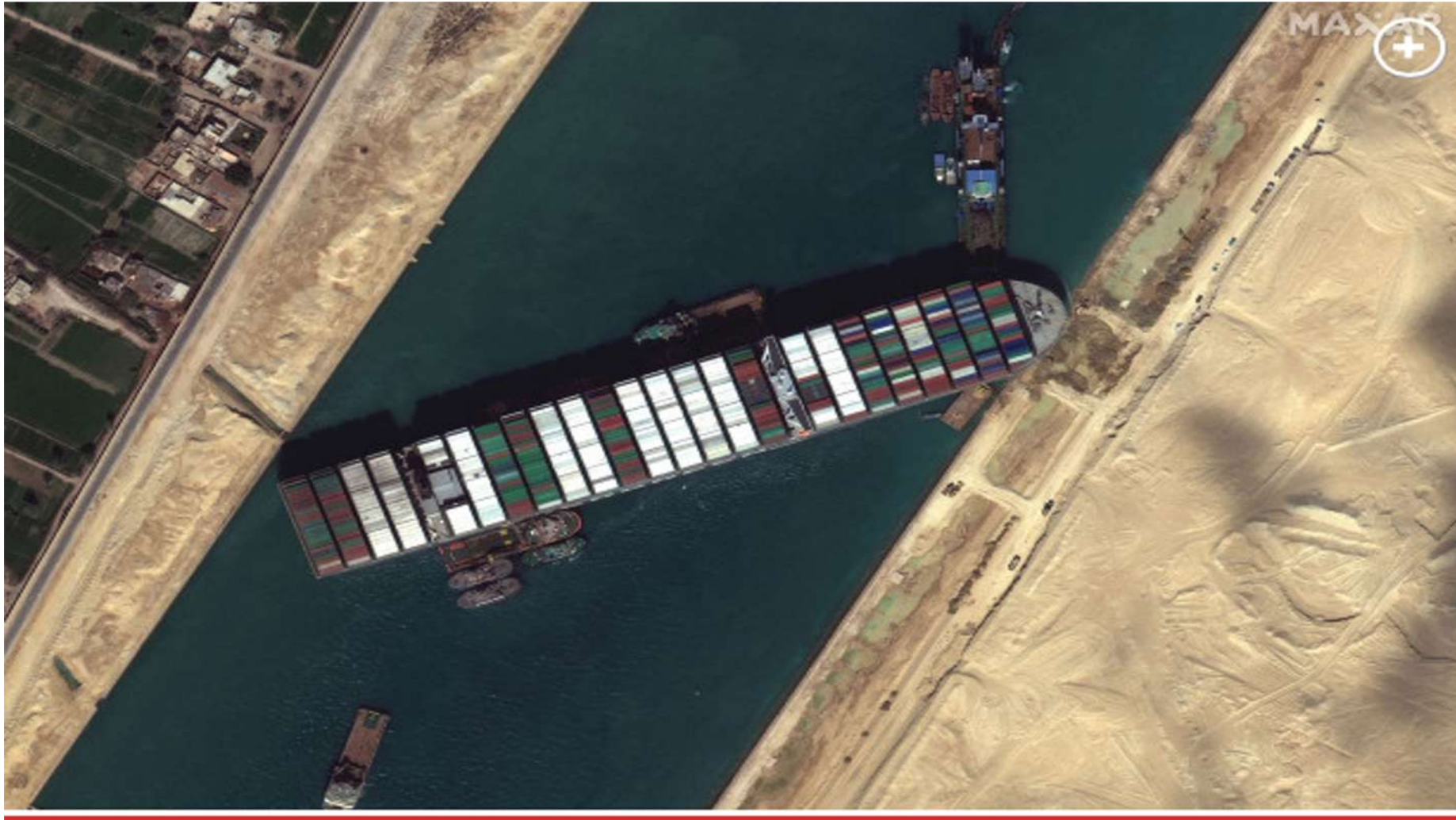
Records Review

Permit Submissions

Monitoring Reports

Audits



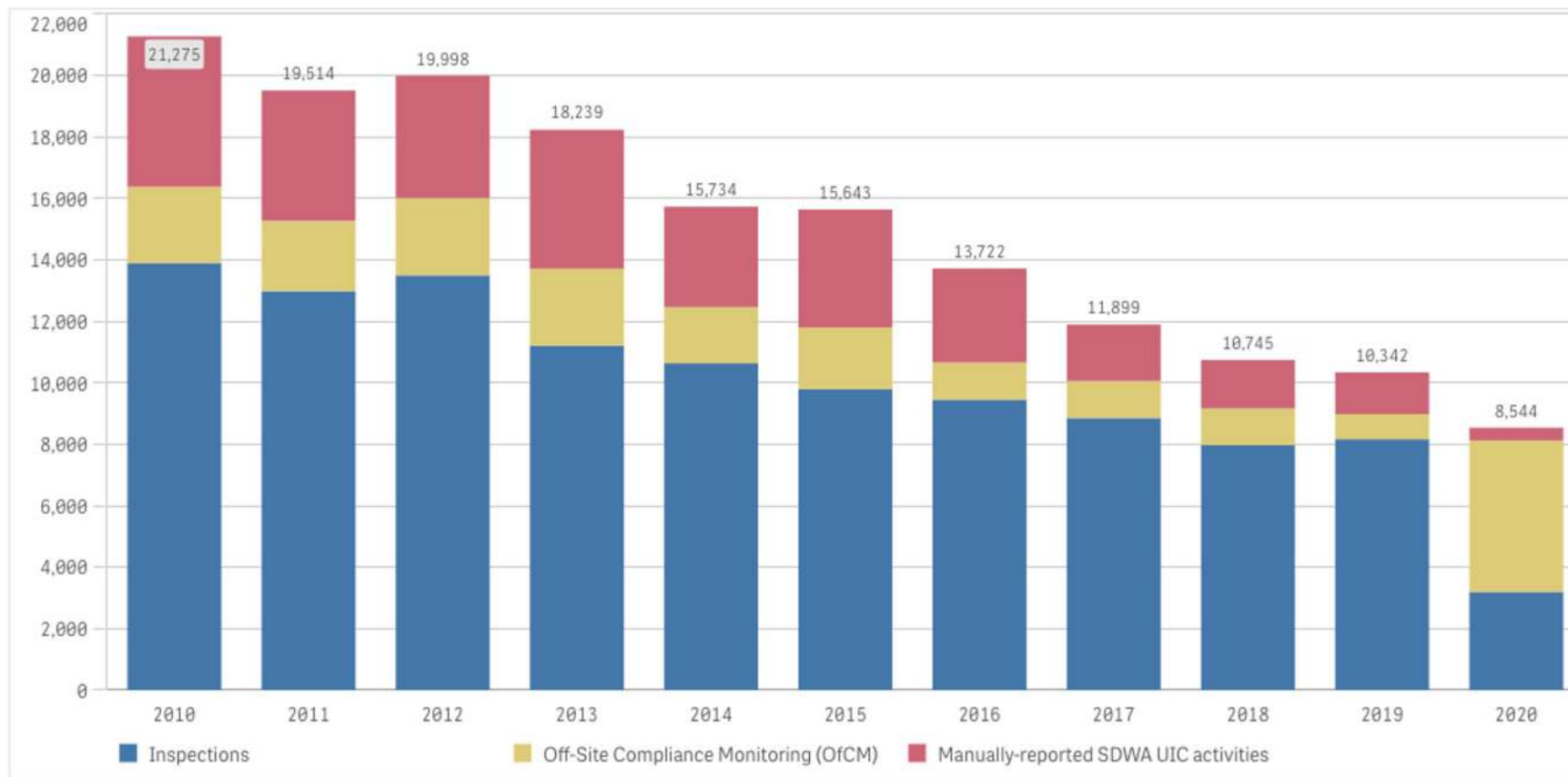


A general view of the Ever Given container ship in the Suez Canal on March 27.

Maxar Technologies/Handout via Reuters



Federal Compliance Monitoring Activities Conducted by EPA FY 2010 – FY 2020



- During FY 2020, the COVID-19 public health emergency severely constrained EPA’s ability to perform on-site inspections in the field. In response, EPA emphasized off-site compliance monitoring activities (OfCM), which are activities EPA performs, but not in-person at a facility, to determine a facility’s compliance. In FY 2020, OfCM activities not previously counted are included in the total.
- Inspections performed by EPA represent a fraction of the total number of inspections conducted across the programs. Most inspections in many programs are performed by states. For information on inspections reported by states see [ECHO’s state dashboards](#).
- EPA focused on the highest priority work, as evidenced by the fact that 22% of FY 2020 inspections – as compared to 15% in FY 2019 – address National Compliance Initiatives. EPA decreased the number of lower priority SDWA UIC compliance monitoring activities by 68% in FY 2020. Between FY 2015 and FY 2019, EPA conducted 17,191 SDWA UIC compliance monitoring activities but initiated only 124 SDWA UIC cases (0.7% of the total).

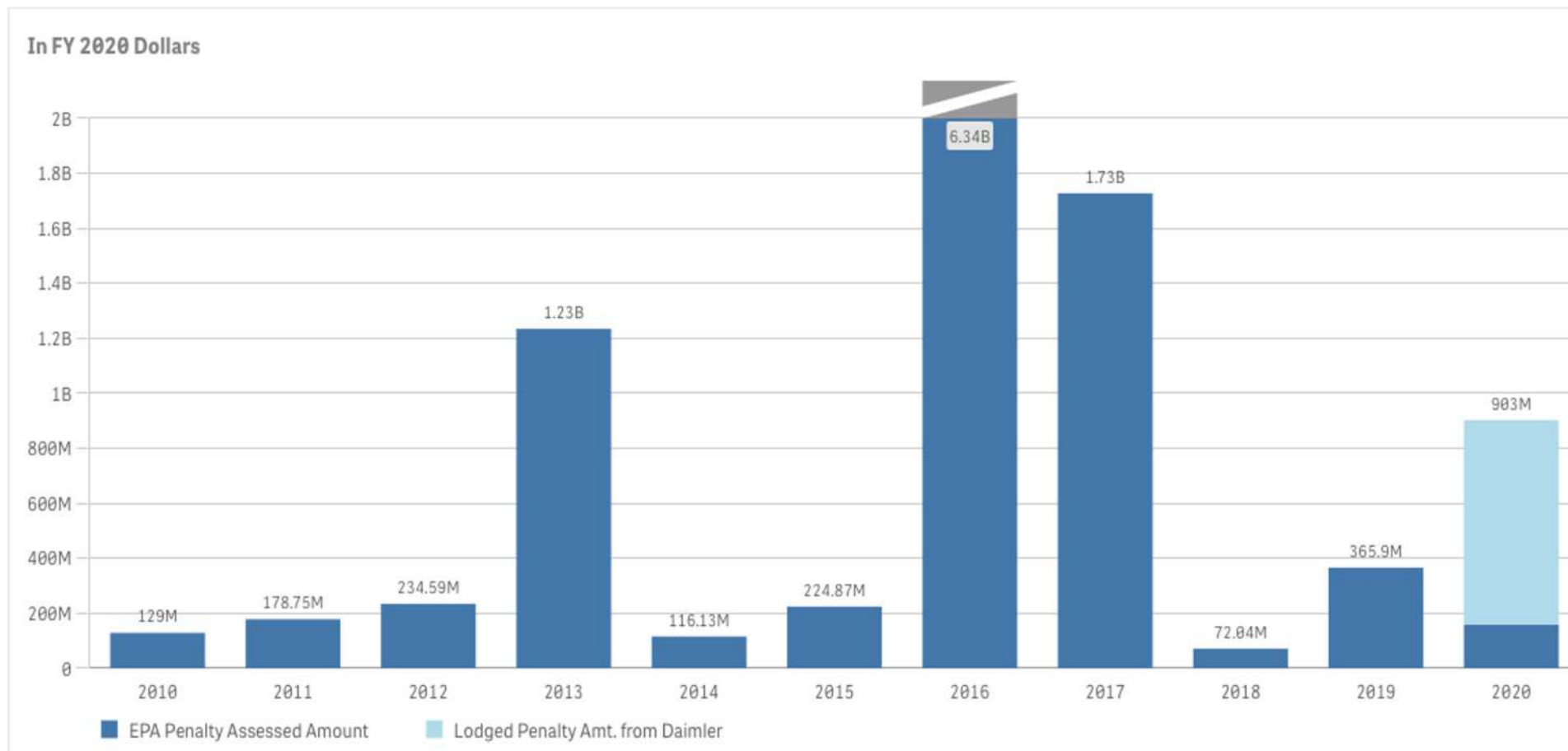
1. An inspection is a compliance monitoring activity performed on-site at a regulated facility; OfCM activities are not performed on-site. Manually-reported SDWA UIC activities can include both on or off-site activities. Therefore, those UIC activities are listed separately.

2. Prior to FY 2020, OECA used a different methodology for deciding which off-site compliance monitoring activities would be reported in its Annual Results and did not collect data on all off-site compliance monitoring activities conducted. The totals for FY 2019 and earlier years reflect the prior methodology. Use caution when comparing FY 2020 results to prior years.

Show Graph Show Table
Export Data



Administrative and Civil Judicial Penalties Assessed FY 2010 – FY 2020



- In FY 2020, EPA assessed nearly \$160 million in federal administrative and civil judicial penalties.
- Annual total penalties assessed are often strongly influenced by one or two large cases.
 - FY 2017 results include the record-setting \$1.45 billion Clean Air Act – Mobile Source penalty paid by Volkswagen.
 - FY 2016 results include the \$5.7 billion BP case and the FY 2013 results include the \$1 billion Transocean case; both cases were related to the 2010 Gulf of Mexico oil spill.
- EPA lodged a consent decree in the Mercedes Daimler case in September 2020, but has not yet obtained final court approval. \$743.75 million penalty in that case is shown in light blue.

1. All prior FY dollar figures in the graph are adjusted to reflect the current value in FY 2020 dollars based on the monthly rate of inflation/deflation as determined by the U.S. Department of Labor Consumer Price Index for All Urban Consumers.

2. Dollar figures referenced in the bullets are not adjusted to reflect inflation/deflation.

Show Graph

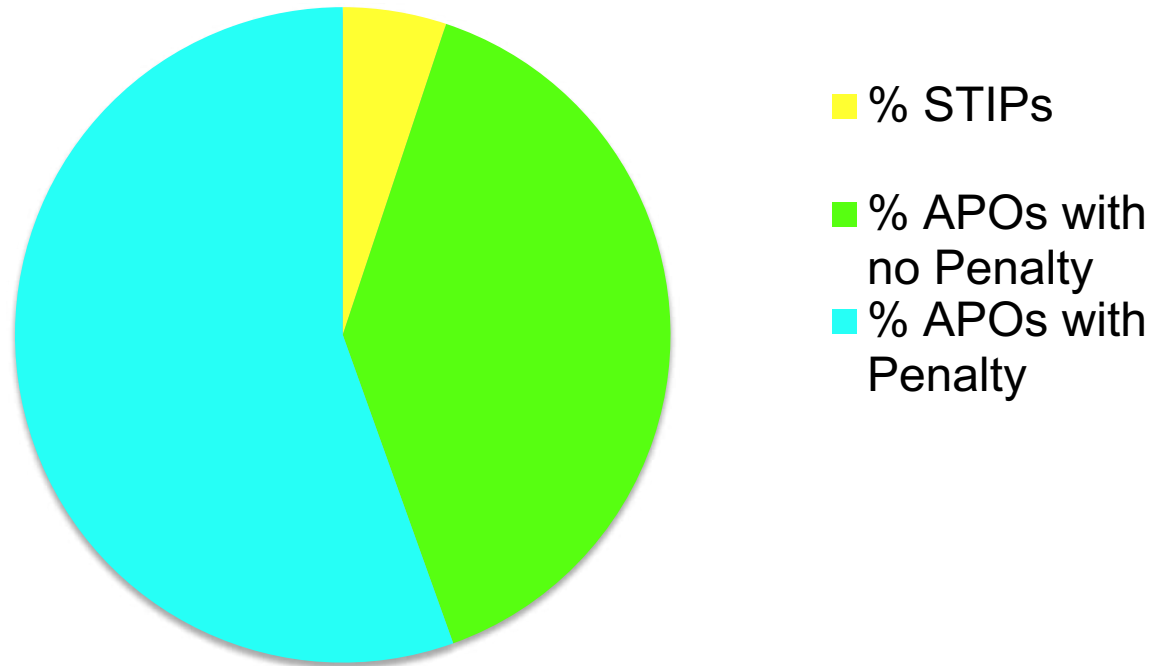
Show Table

Export Data

Administrative Environmental Enforcement Actions In Minnesota

Alleged Violations Letter/Notice of Violation/
Ten Day Letter
Administrative Penalty Orders
Stipulation Agreements
Schedules of Compliance
Administrative Orders

2019/2020 MPCA Enforcement Actions



Stipulation Agreements 2019-2020 = 18. Average Penalty = \$26,324.78*

APOs 2019-2020 = 207. Average Penalty = \$4,492.04

APOs 2019-2020 With No Penalty = 129. Penalty \$0

Note: 2019 Water Gremlin Stipulation Agreement \$4.5M Penalty and \$1.5M Supp. Env. Projects Excluded From Average Penalty

Other Enforcement Considerations

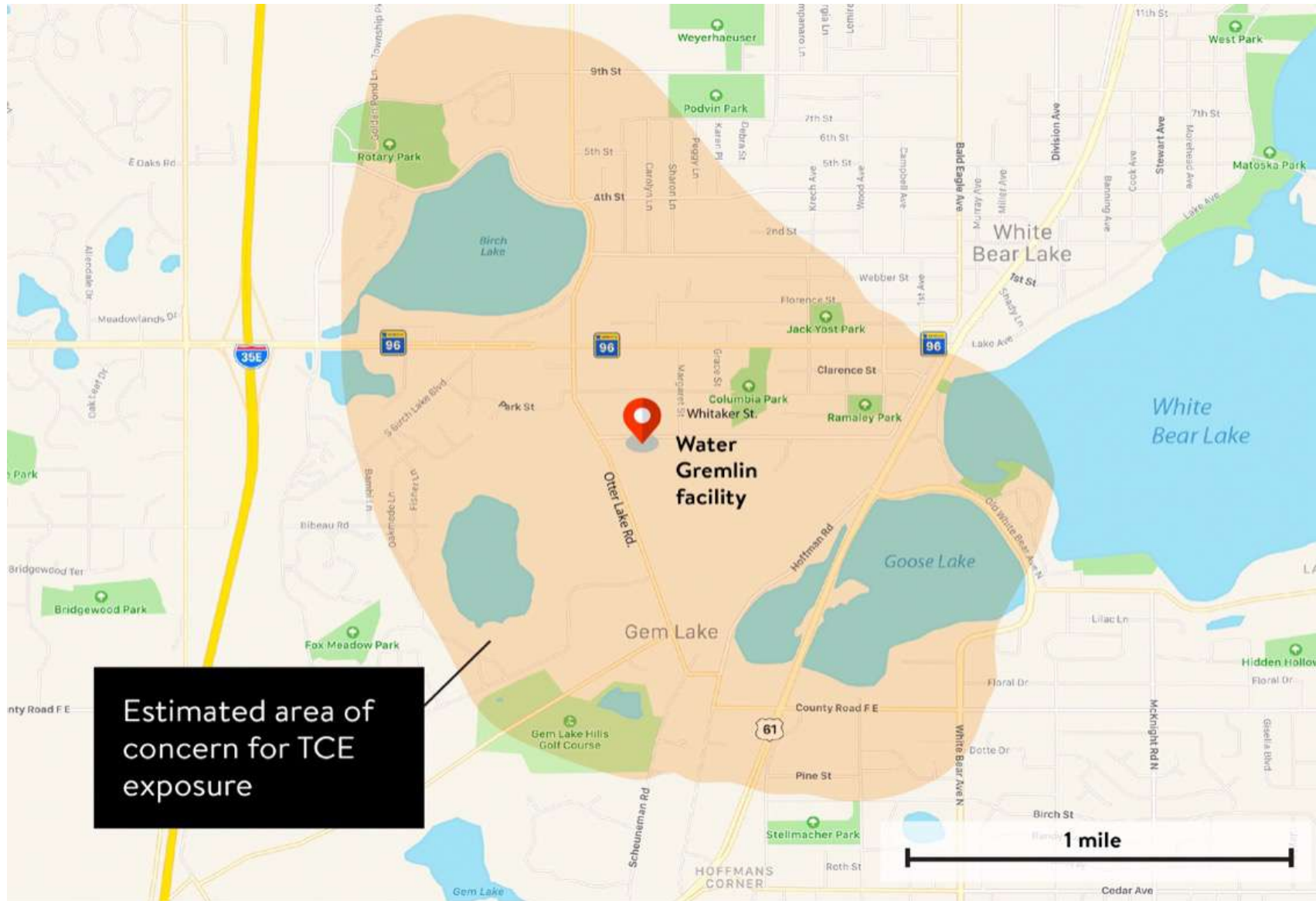
Civil Enforcement

Attorneys Fees/Equal Access to Justice Act

Criminal Enforcement

Environmental Justice

Water Gremlin



QUESTIONS?

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