



# Minnesota CLE Webinar Complying with Environmental Laws in the Era of Trump

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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**



# Sources of Environmental Regulations

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



# 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 (TSCA)**
- **Safe Drinking Water Act (SWDA)**

# 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**



# 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- Permit By Rule**
- **Conditional Use**



# 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

<b>Hazardous Waste</b>	
FEDERAL LAW PROHIBITS IMPROPER DISPOSAL	
If found, contact the nearest police or public safety authority, and the Washington State Department of Ecology or the Environmental Protection Agency	
Accumulation Start Date:	Generator Name:
Reportable Quantities (RQ): lbs 40 CFR Subchapter J, Part 302, Table 302.4	Address:
Manifest Document #:	City:
Emergency Response Guide #:	State:
EPA Waste Code(s) and/or Characteristic(s)	Zip:
	EPA ID #:

# 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**
- **Agency Monitoring**
- **Self-Reporting**



# How Do Violations Arise? Cont...

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

# 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
  - Stipulated Civil Penalties
  - 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 Statutes 609.671**



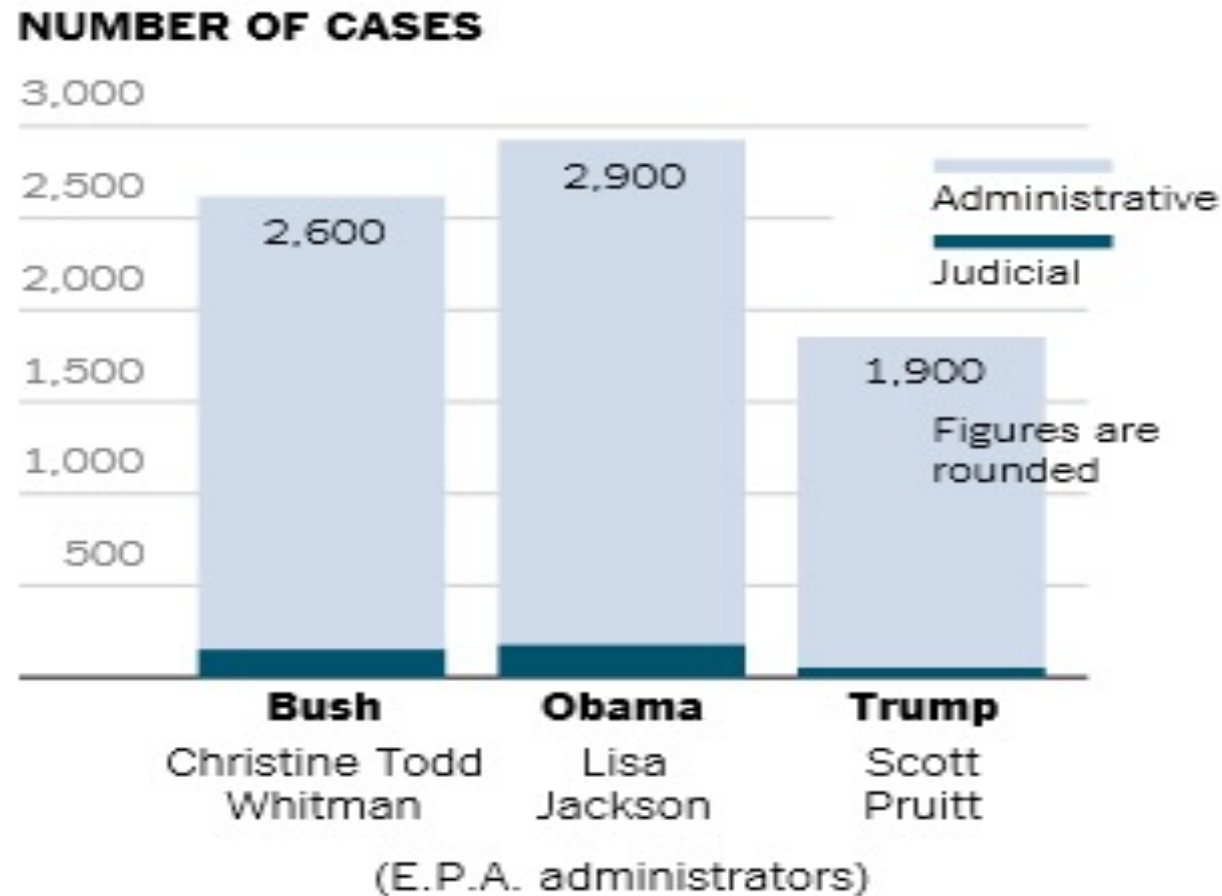
# Criminal Prosecution (continued)

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

# Federal Enforcement Trends

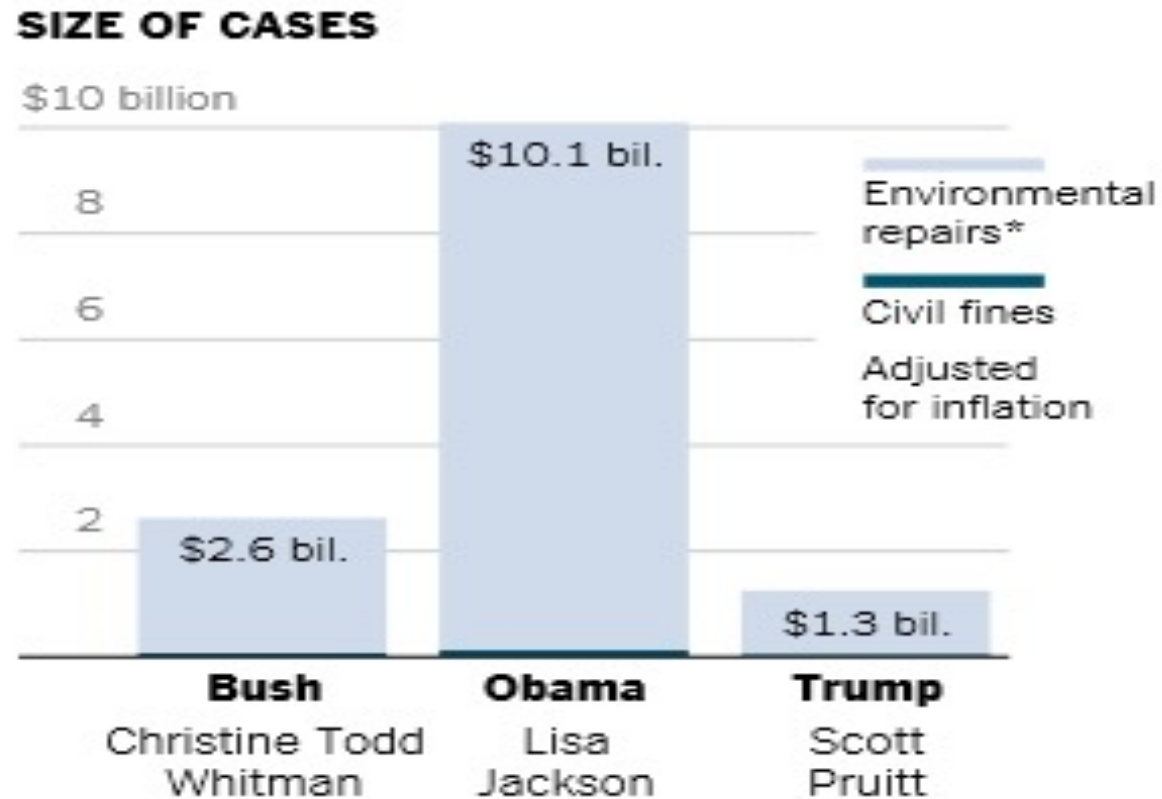
- **Enforcement in the Trump Era**
- **Enforcement Policies**
- **Supplemental Environmental Projects (SEPs)**
- **Use of Guidance**
- **Increase in Citizen Suits**
- **Increase in State AG suits**

# Federal Enforcement Trends



Source: NY Times 12/17

# Federal Enforcement Trends

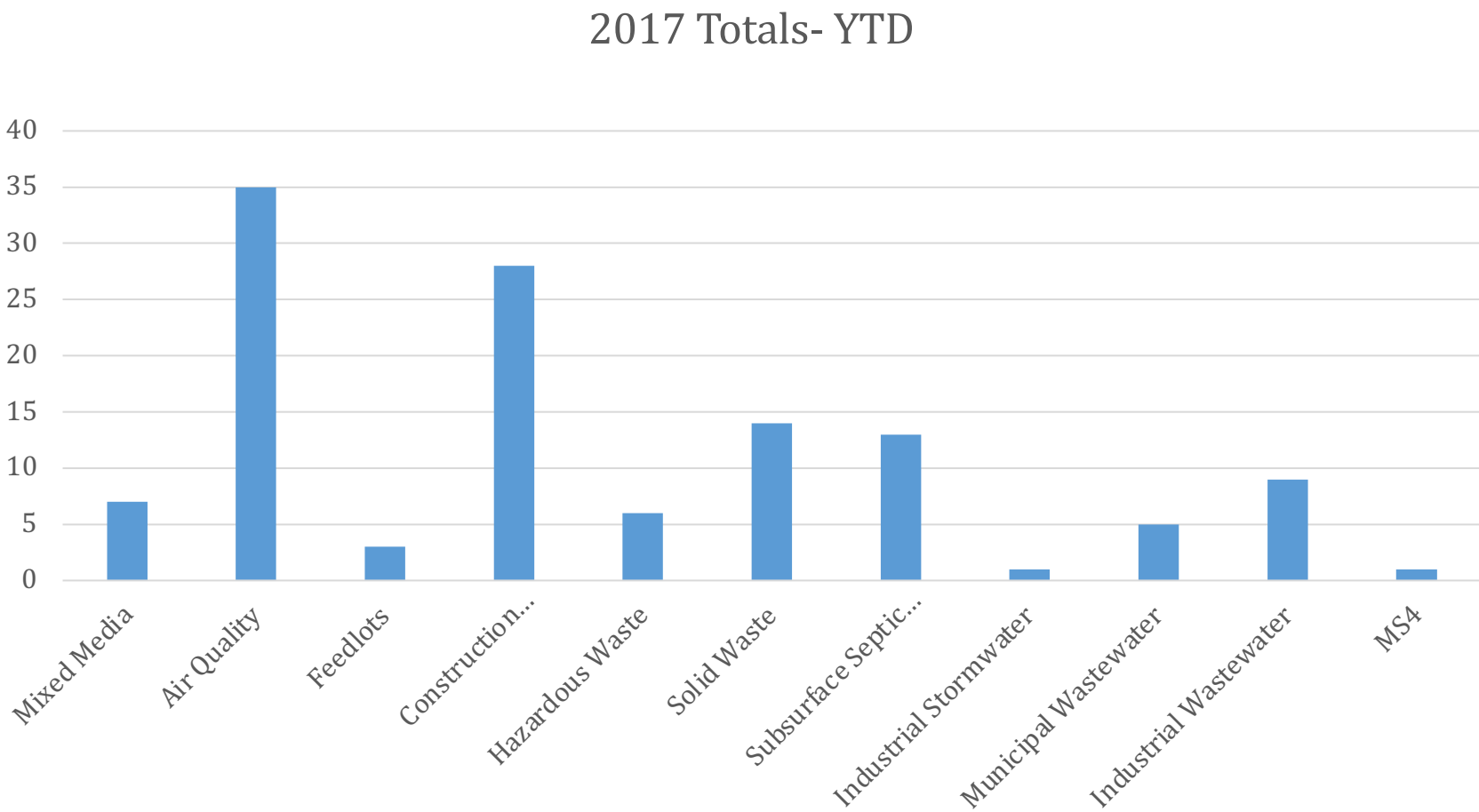


Source: NY Times 12/17

# State Enforcement Trends

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

# State Enforcement Trends





# Compliance Issues in Business Transactions

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

# 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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