

Todd E. Palmer

Partner
Sub-Practice Leader, Environmental & Natural Resources

Overview

For more than 25 years, Todd has helped numerous clients remain in compliance with all aspects of the complex and dynamic Clean Air Act regulatory program. His extensive knowledge of and experience with Clean Air Act matters includes obtaining air emission control permits, planning future activities to minimize the expense of regulation, and the defense of allegations that a company may have violated Clean Air Act requirements.

Todd has worked on environmental issues in industries including:

- Petroleum refineries
- Electric utilities
- Mining companies
- Defense contractors
- Higher education institutions
- Paper and other industrial manufacturers
- Biofuel facilities
- Construction contractors
- Agricultural operations

Clients also look to Todd to anticipate legal trends in environmental regulation, allowing them to reduce compliance costs, minimize liabilities, develop market opportunities and create a competitive advantage in the marketplace.

Toward this end, Todd has assisted clients in developing innovative regulatory strategies for their businesses. He has negotiated Second Generation regulatory agreements under Wisconsin's Environmental Cooperation Pilot Program, providing his clients with the regulatory flexibility to fit their unique business needs while maintaining the highest environmental standards.



tepalmer@michaelbest.com

Milwaukee

T. 608.283.4432

Legal Assistant

Mary Kay Bradford
mkbradford@michaelbest.com
T. 414.225.4924

Industries

Energy
Higher Education

Practices

Climate Change & Sustainability
Energy Law
Environmental & Natural Resources
Environmental Compliance
Counseling & Advocacy
Regulatory

In addition, the Secretary of the Wisconsin Department of Natural Resources (WDNR) has appointed Todd to serve on the State's Air Management Study Group, an advisory committee charged with making recommendations to improve the State's Air Regulatory Program. This work includes streamlining air permitting, implementing federal regulatory directives, advising on the development of state Clean Air Act implementation plans and, where necessary, developing new programs in the state. Todd has previously served on technical advisory groups that have influenced the development of many of Wisconsin's Clean Air Act regulations.

Todd is a co-author of the Second and Third Editions of the *Wisconsin Environmental Law Handbook*, and *The Wisconsin Business Advisor Series: Environmental and Real Estate Law*, Volume 2, published by the State Bar of Wisconsin CLE Books.

Experience

Clean Power Plan

In February 2016, Todd was one of 30 lawyers representing 29 U.S. states and state agencies who signed onto a brief on behalf of the Mississippi Public Service Commission obtaining a stay of the federal Clean Power Plan from the U.S. Supreme Court in a 5-4 decision. The Clean Power Plan sets the first national carbon emission limits for U.S. electric power plants. The decision marked the first time a U.S. Supreme Court has ever granted such a motion in its history.

Precedent-setting work

Todd successfully represented Wisconsin industrial and utility interests in a precedent-setting challenge to the U.S. Environmental Protection Agency (US EPA)'s rule to restrict the transport of pollution. He also defended enforcement claims jointly prosecuted by the State of Wisconsin and the US EPA resulting in a precedential decision defining the limitations of the government's Clean Air Act enforcement powers in *United States v. Murphy Oil USA, Inc.*

Climate change regulations and litigation

Todd serves as special counsel to the State of Wisconsin providing litigation representation and regulatory advice related to the environmental compliance of approximately 50 coal-fired boilers owned and operated by the state. These boilers are used to supply heat, and in some cases electricity, to institutional facilities owned and operated the University of Wisconsin system and other state agencies.

With the previous administration and many states prioritizing climate change, the federal and various state/regional governments have developed multiple regulations restricting the carbon intensity of power production. Todd has worked with the State of Wisconsin and University of Wisconsin System to deal with these regulatory changes and defend them in federal court all while evaluating cost-effect compliance strategies under Clean Air Act rules. Todd also provided assistance in the permitting of new and modified units at many campuses.

This high-profile project was precipitated by lawsuits filed by the US EPA, Sierra Club and even the State of Wisconsin against sister state agencies. The project involves defending against state and federal government and environmental groups which are empowered under federal law to enforce federal law while, from a regulatory standpoint, dealing with the myriad of rules putting pressure on coal-fired boilers.

Petroleum refineries and flaring enforcement

Todd's client Calumet Superior LLC operates a petroleum refinery located in Superior, Wisconsin. The US EPA has targeted this refinery under the Agency's flaring enforcement initiative. Todd has been defending Calumet against novel and unprecedented legal enforcement theories, many of which have national implications.

Tribal Air Coalition

Todd represents a coalition of ten large manufacturing/mining entities in a process whereby Native American tribes are seeking to exercise their authority under the Clean Air Act to re-designate their respective reservations to a restrictive "Class I" air quality designation. This action may restrict off-reservation air pollution sources whose emissions may adversely affect the tribal Class I area. This is a novel regulatory development and Todd's work is receiving national attention.

Negotiating settlements

Madison Gas & Electric (MGE) owns and operates a fleet of electric generating assets in Wisconsin. Some of those units are co-owned with other regulated utilities. Todd represented Madison Gas & Electric in litigation filed by the US EPA and Sierra Club alleging Clean Air Act violations at the co-owned power plants located in the State of Wisconsin. On behalf of MGE, Todd ultimately negotiated settlement terms with the Sierra Club, U.S. Department of Justice and US EPA. The total value of the settlement was approximately \$2 billion. Todd continues to represent MGE in implementing the settlement agreement.

Honors & Recognitions

- "Lawyer of the Year," *The Best Lawyers in America*®, 2018
- *The Best Lawyers in America*®, Litigation - Environmental and Environmental Law, 2006-present
- Leading Natural Resources & Environment Lawyer, *Chambers USA*, 2010-present
- Member, The American College of Environmental Lawyers (ACOEL), 2015
- "Top Lawyers" list, *Madison Magazine*
- "Lawyer of the Year" (Madison Area), *The Best Lawyers in America*®, Environmental Law, 2011 and 2015
- "Wisconsin Super Lawyers" list by *Super Lawyers magazine*

Professional Activities

- Member, American Bar Association, Section on Natural Resources, Energy and Environmental Law
- Appointed Member, Wisconsin DNR Air Management Study Group

Education

- Saint Louis University School of Law, Juris Doctor (J.D.), 1992
- Southern Illinois University, Bachelor of Arts (B.A.), 1986

Admissions

- Illinois

- United States Patent and Trademark Office
- Wisconsin
- United States District Court, Eastern District of Wisconsin
- United States District Court, Western District of Wisconsin
- United States District Court, Northern District of Illinois
- United States Court of Appeals, District of Columbia Circuit

Community Involvement

- Board, Wisconsin Association of Talented and Gifted

Related News

PUBLICATION

April 30, 2019

EPA Releases Draft Recommendations for Groundwater Impacted by Two PFAS Compounds

PUBLICATION

April 29, 2019

EPA Shifts Policy for Shielding Malfunction Events from Fines Under Clean Air Act

NEWS

April 26, 2019

Chambers USA Recognizes Twenty-Four Michael Best Partners in 2019 Rankings

PUBLICATION

April 16, 2019

Rejecting “Conduit” Theory, EPA Concludes the Clean Water Act Does Not Regulate Point Source Discharges to Groundwater

PUBLICATION

February 15, 2019

EPA Announces Action Plan to Address Public Health Risks Posed by PFAS Chemicals

PUBLICATION

January 22, 2019

New Closures under Wisconsin’s Voluntary Party Liability Exemption (VPLE) Program Will Exclude PFAS and Other Emerging Contaminants

PUBLICATION

January 10, 2019

EPA Takes New Position on Calculating Ancillary Benefits of Regulations

PUBLICATION

December 13, 2018

EPA and Army Propose New “Waters of the United States” Rule Rejecting Controversial 2015 Obama Rule

EVENT

October 30, 2018

Air & Waste Management Association Lake Michigan States Section’s 2018 Air Quality Management Conference

Regulatory Review for 2017/2018

EVENT

October 23, 2018

Federation of Environmental Technologists, Inc.’s Environment 2018 Conference and Exhibition

State and Federal Enforcement Initiatives

PUBLICATION

September 18, 2018

EPA Updates Enforcement Program

NEWS

August 15, 2018

88 Michael Best Attorneys Named The Best Lawyers in America© 2019

PUBLICATION

August 1, 2018

EPA Incorporates Farm Air Emissions Reporting Exemption into Regulations

PUBLICATION

June 28, 2018

Down with Deference: Wisconsin Courts Will No Longer Defer to State Agency Conclusions of Law

PUBLICATION

June 4, 2018

The New Federal Tax Law and Its Implications for Settling Environmental Enforcement Actions

PUBLICATION

May 18, 2018

WDNR Analyzes Low-Cost, Portable Air Monitors

PUBLICATION

May 10, 2018

States Adopting PFAS Standards to Reduce Exposure

NEWS

May 3, 2018

Chambers USA Recognizes Twenty-Six Michael Best Partners in 2018 Rankings

PUBLICATION

March 29, 2018

WDNR Issues a New Policy for Implementing the One-Hour NO₂ NAAQS

PUBLICATION

March 9, 2018

Wisconsin Legislature Advances Bill Easing State Wetland Permitting Requirements

PUBLICATION

February 2, 2018

Enforcement Update: DOJ, EPA Announce Key Changes to Enforcement Approaches

PUBLICATION

January 30, 2018

EPA Withdraws the “Once In, Always In” Clean Air Act Policy

PUBLICATION

January 30, 2018

American College of Environmental Lawyers (ACOEL)

The Packers, Beer, Cheese Curds and ...Regulatory Reform?

PUBLICATION

January 5, 2018

EPA Denies Petition Seeking Regulation of CAFOs under the Clean Air Act

EVENT

November 14, 2017

2017 WMC Foundation Clean Air Act Conference

Clean Air Act Litigation Update

NEWS

August 15, 2017

87 Michael Best Attorneys Named The Best Lawyers in America© 2018

NEWS

August 15, 2017

Ten Michael Best Attorneys Named “Lawyer of the Year”

NEWS

May 26, 2017

Twenty-Two Michael Best Partners Recognized in Chambers USA 2017