

EPA Enforcement Theory

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Compliance is the goal . . .

ENFORCEMENT IS JUST A TOOL TO
GET IT.

Why Enforcement?

#1: Respect for Rule of Law

Why Enforcement?

#2: Protect Communities:

Reduce pollution and stop noncompliance

Why Enforcement?

#3: Level playing field for those who play by the rules

Why Enforcement?

#4: Remedy the harm caused by the violation

Why Enforcement?

#5: Deterrence

- Deter the violator
- Deter others

Enforcement Cases

1. Injunctive relief: Stop the harm/get in compliance
2. Mitigation: Address the damage caused by the violation
3. Penalty: Level playing field plus deterrence
 - Economic benefit
 - Gravity
4. Supplemental Environmental Projects

EPA Enforcement Role In Delegated States

States - primary day-to-day implementation of most Clean Water Act, Clean Air Act, RCRA programs

EPA - ongoing responsibility to ensure adequate implementation

- Congress mandated role for EPA in permitting, enforcement, and standards
- Ensure base level of protection for all citizens

Core level of independent federal presence - inspections/enforcement

EPA Enforcement Role

National and Regional Priorities/Initiatives

Gaps in state programs: resources, expertise, will

Interstate issues

- pollution across state lines
- companies operating in multiple states

EPA Enforcement Role

EPA Direct Enforcement Programs:

- Tribal
- Wetlands
- CAA Section 112r
- TSCA Lead Paint
- FIFRA
- OPA/SPCC
- States w/o delegated program authority

Our Principles

Focus on environmental harm

Balance across region and across sectors

Proportional and predictable enforcement (“fair”)

Consistent and credible presence

Ensure environmental justice

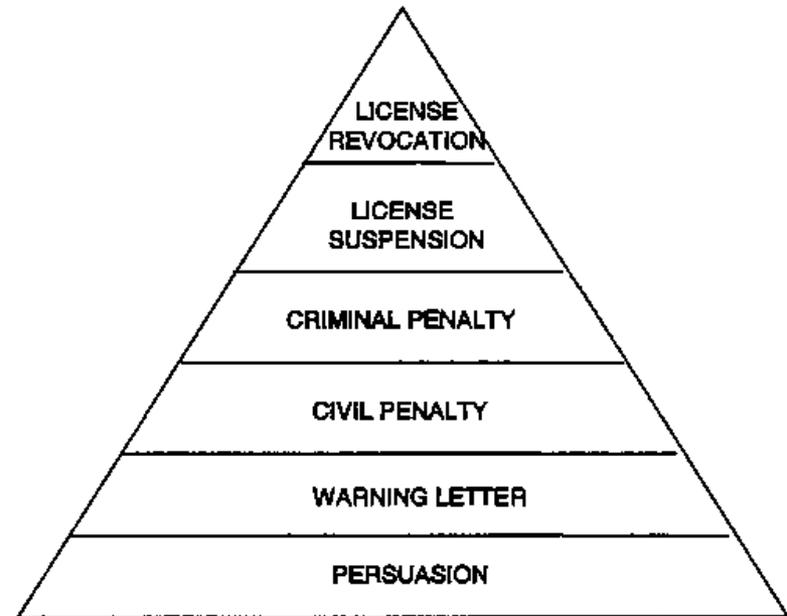
Promote SEPs

Proportional and Predictable

(“Fair and Consistent”)

We strive in each case to use the right enforcement tool for each case, considering:

- **Seriousness of the violation**
- **Size, sophistication, and compliance history of violator**



Proportional and Predictable

(“Fair and Consistent”)

We strive in each case to :

Be consistent

- **penalty policies**
- **penalty panels**
- **management review**

Use pre-filing negotiations in most cases, to allow for consideration of all facts

Consider ability to pay when appropriate

EPA Region 7 RCRA Enforcement: 2014

EPA conducted 183 RCRA inspections

- About 50% of those in Iowa
- 75% of those inspections (138) documented RCRA violations
- 12 penalty actions
- Total Penalties: Approx \$350,000

Vast majority of facilities found to be in violation returned to compliance **without** formal enforcement or penalty



Focus on Biggest Sources: Coal-fired Power Plants

In Iowa, Missouri, Kansas, and Nebraska:

- 70% of our electricity comes from coal-fired power generation
- 90% of our coal-fired units are over 30 years old
- Only 30% have advanced NOx controls (SCR/SNCR)
- Only 35% have SO2 scrubbers

Enforcement: Air Pollution

Interstate Power & Light

- Company's coal-fired power plans to invest \$620 million to control pollution and meet stringent emission rates for SO₂ and NO_x.
- Will spend \$6 million on environmental mitigation projects.





Protecting Communities: Air Toxics

Smaller sources with localized
community impacts

Tank farms

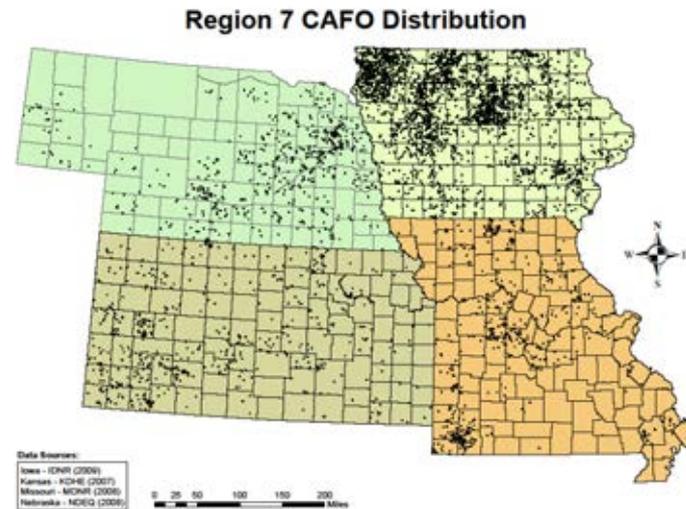
Landfills

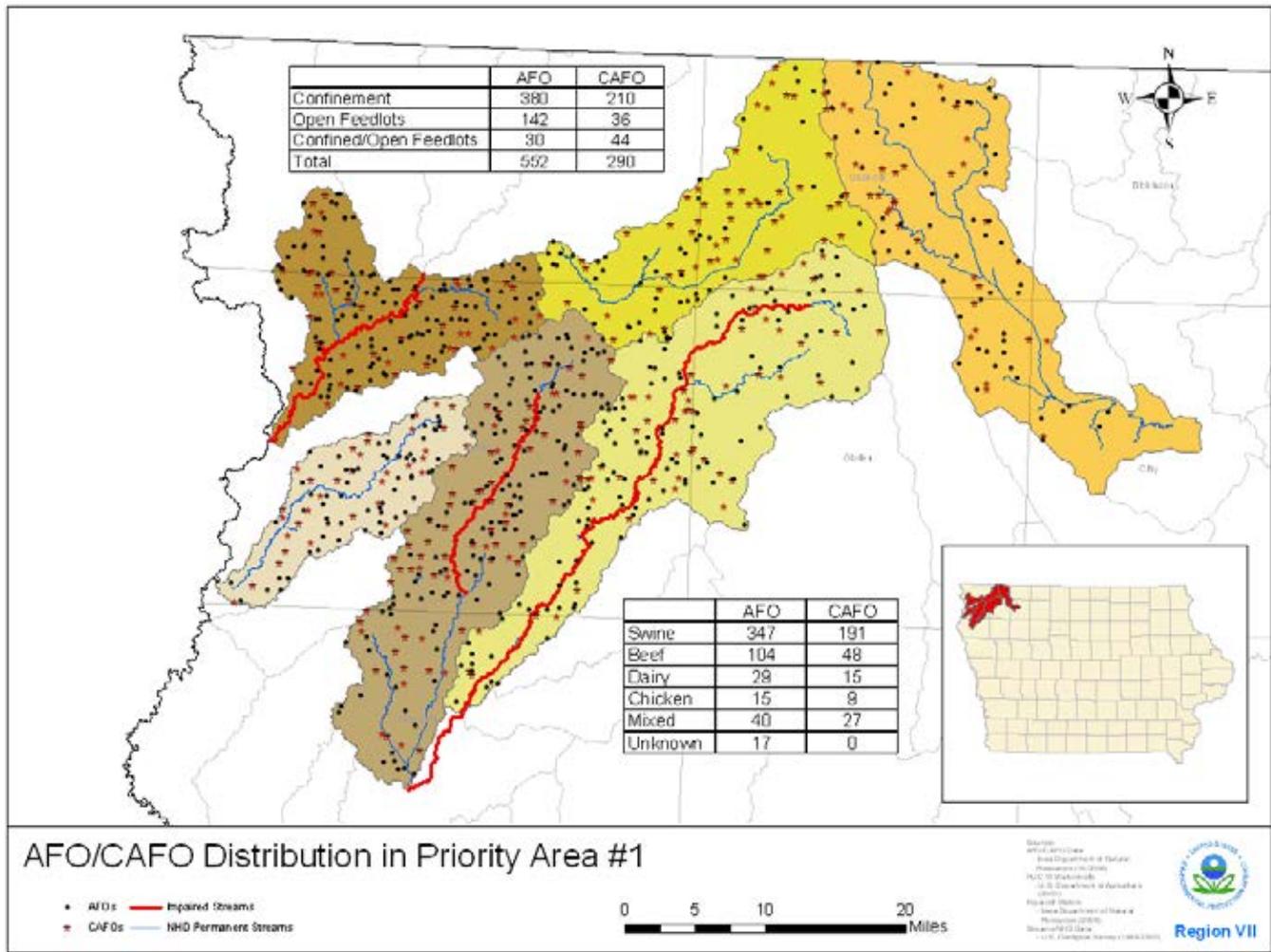
Flaring

Sources contributing to NAAQs
attainment concerns



Keeping Manure out of Streams and Rivers





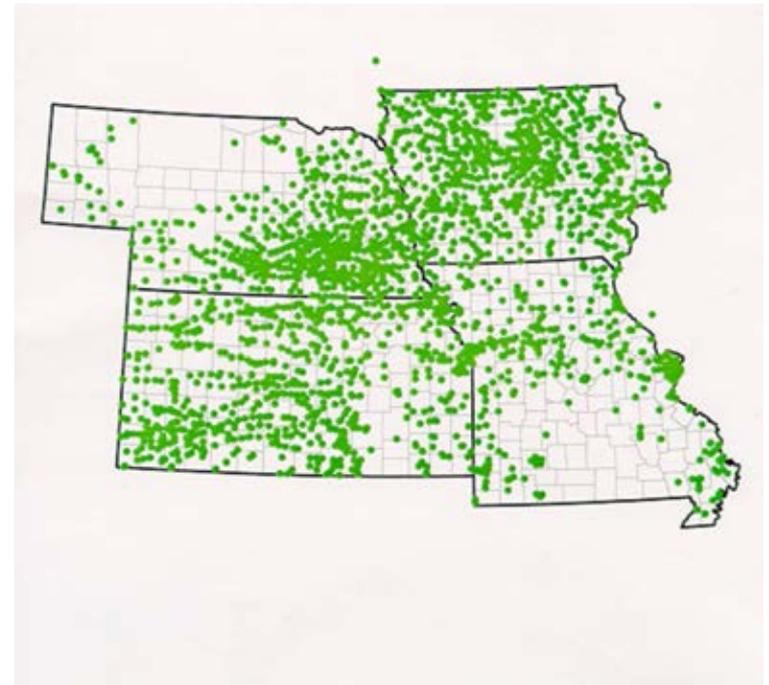
Level Playing Field, Deterrence: *U.S. vs. STABL*

U.S. v STABL: \$2.3M penalty for CWA violations



- Pretreatment case involving Lexington, NE meatpacker
- \$1.15M economic benefit, \$1.15M gravity
- “Stabl’s violations were serious . . .the Court concludes that a civil penalty in an amount twice Stabl’s economic benefit will serve the interests of justice and help deter others from engaging in similar non-compliance

EPA Direct Implementation: CAA 112r



Chemical Risk: CAA 112r Priorities

Priorities:

- High risk facilities
 - Near population exceeding 100,000 people
 - Hazard index greater than or equal to 25
 - Significant prior accidental releases
- Refrigeration and Agriculture Sectors
 - Handle, process or store > 10,000 pounds anhydrous ammonia

Criminal Enforcement

Knowing violations

False statements

Harcros Case:

- No storage permit
- 2006 internal company inventory of lab wastes needing to be disposed
- Subsequent inspections/search warrant found same wastes on site
- Some highly hazardous, including phosgene solution
- Rusted corroded containers, incompatibles, lack of labels
- Guilty plea 9/25/14: Illegal storage w/o permit
- \$1.5M penalty





Compliance and Enforcement Challenges

- Noncompliance
- Information gaps
- Larger universe of regulated facilities
- Budgets declining



U.S. Environmental Protection Agency

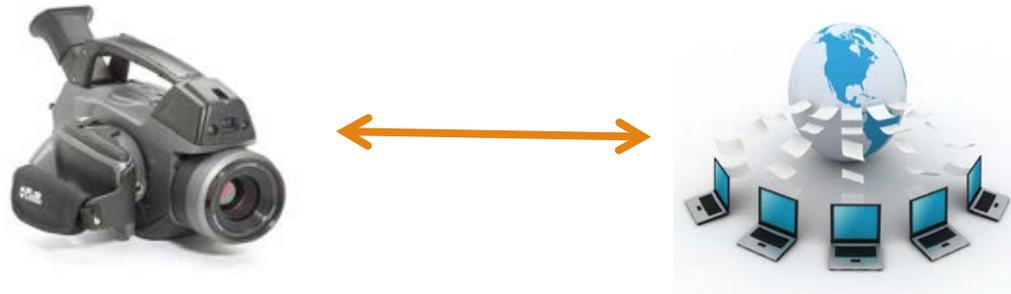
Technology Paradigm Change



Credit: CitiSense Air Quality Monitoring Mobile Sensors, University of California, San Diego, Jacobs School of Engineering. See: http://ucsdnews.ucsd.edu/pressrelease/small_portable_sensors_allow_users_to_monitor_exposure_to_pollution_on_thei



Technology Opportunities



Advances in information and monitoring technologies:

- “make the invisible visible”
- inform industry, government, and the public
- Enhance ability to prevent, reduce, treat or avoid pollution
- drive compliance through transparency and accountability



Advanced monitoring technologies

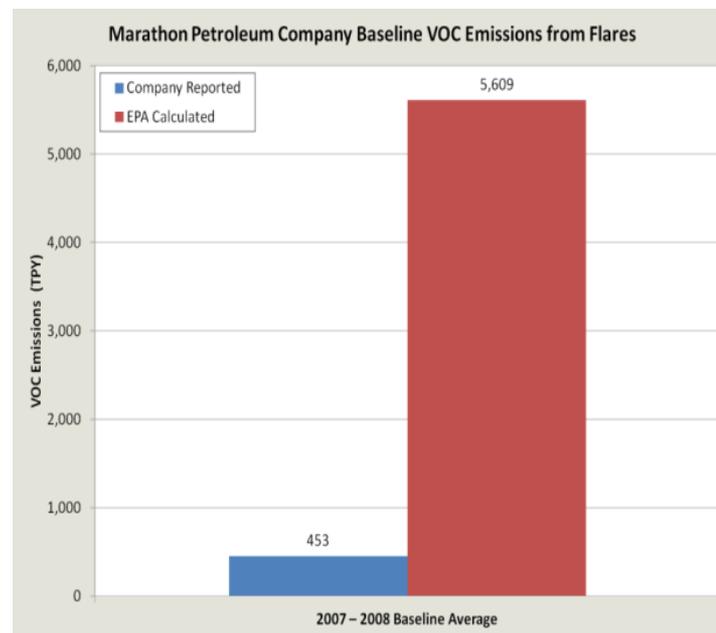
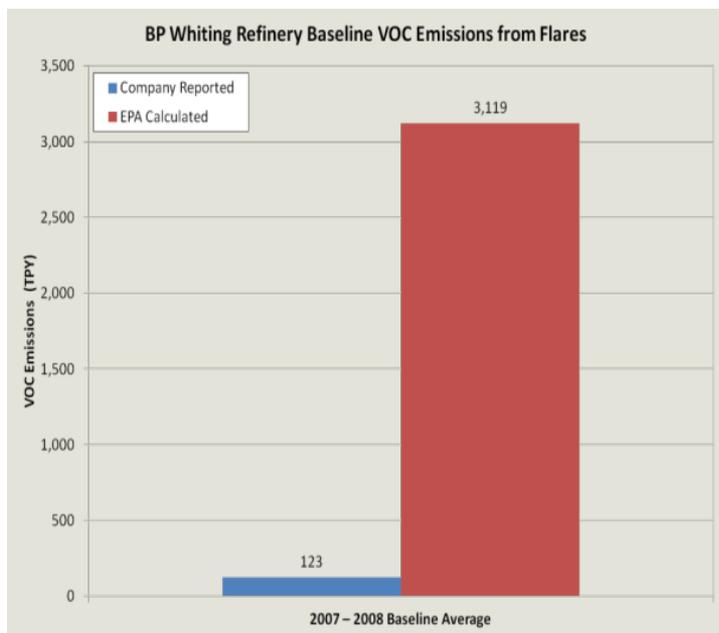
- Real-time monitoring – knowing about pollution as it's happening
- Facility feedback loops – preventing pollution before it happens
- Fenceline monitoring
- Community monitoring
- Remote sensing



Passive diffusion tubes can be placed at a facility's boundary and is a low-cost way to measure air toxics

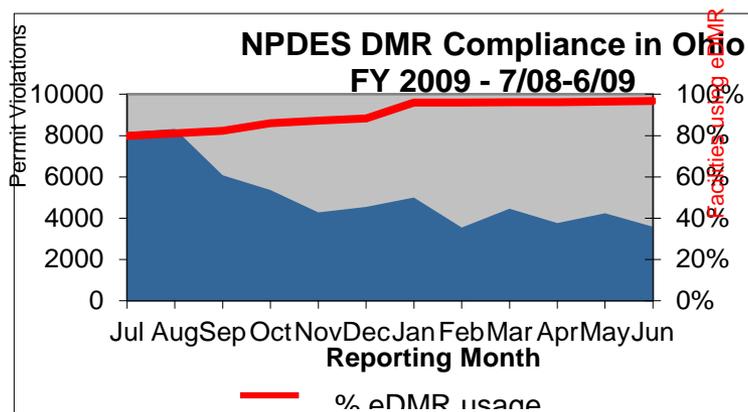


Advanced monitoring: Flaring Enforcement



Electronic reporting

- Ohio NPDES e-reporting success story
- NPDES e-reporting rule
- RCRA e-manifest



Increased transparency

- Evidence that effective transparency drives performance
- SDWA Consumer Confidence Reports
- Restaurant health inspection grades

SDWA: Mailed report on compliance resulted in:

Total violations: down 30-44%

Health violations: down 40-57%

*Benear & Olmstead, Journal of Environmental Economics and Management (2008)





More effective rules and permits

Rules structured to promote compliance

- Simplicity
- Designed to make compliance the default
- Market mechanisms – efficiency and clarity
- Transparency as accountability tool
- Self and third-party certifications





Incorporating Next Gen in Settlements

Example - CAA settlement with BP Whiting (Indiana)



- Fence line monitors located in consultation with EPA and community
- Data reported weekly on public web site
- Facility must review data with community at their request