



ENFORCEMENT CONTINUUM -  
FROM COMPLIANCE TO  
CRIMINAL ENFORCEMENT (OR  
NOT...)



- ❑ What is the value of an effective compliance program?
- ❑ How do we get there?



# Effective Compliance is the Destiny

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What is  
effective  
compliance?

“Compliance is  
a culture, not  
just a policy”

- Brent Snyder, DOJ



# **First - Understand the Broad Operating Environment Facing All Companies**

- **The “Flint Effect”**
- **The Focus on Cases with Potential Public Health Impacts**
- **EPA’s National Enforcement Initiatives**
- **State (and local) priorities**
- **Public Expectations**
- **The “full spectrum” of environmental responsibilities**
- **Worker and Chemical Safety Initiatives**
- **The “Yates Memo” and focus on corporate and individual accountability.**

# ***Let EPA tell you what's important...National Enforcement Initiatives***

(Every three years, EPA sets national enforcement initiatives to focus civil and criminal enforcement resources and expertise on serious pollution problems affecting communities.)

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## **Air**

- \* Reducing Air Pollution from the Largest Sources
- \* Cutting Hazardous Air Pollutants (Expanded for 2017-2019)\*\*

## **Energy Extraction**

- \* Ensuring Energy Extraction Activities Comply with Environmental Laws

## **Hazardous Chemicals**

- \* Reducing Risks of Accidental Releases at Industrial and Chemical Facilities

## **Water**

- \* Keeping Raw Sewage and Contaminated Storm Water Out of Our Nation's Waters
- \* Preventing Animal Waste from Contaminating Surface and Ground Water
- \* Keeping Industrial Pollutants Out of the Nation's Waters

### **\*\*Protecting Communities from Exposure to Toxic Air Emissions**

\**Organic Liquid Storage Tanks* which can be a source of excess air emissions at many sites

\**Hazardous Waste Air Emissions* which can result in toxic air emissions if improperly handled resulting in public health risks and potential for fire or explosion risks.

# Understand the Distinctions Between Civil and Criminal Enforcement.....

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## ■ Civil Judicial and Administrative

- Strict liability violations
- Burden of Proof: Preponderance of the evidence
- Results:
  - civil penalties
  - injunctive relief
  - SEPs

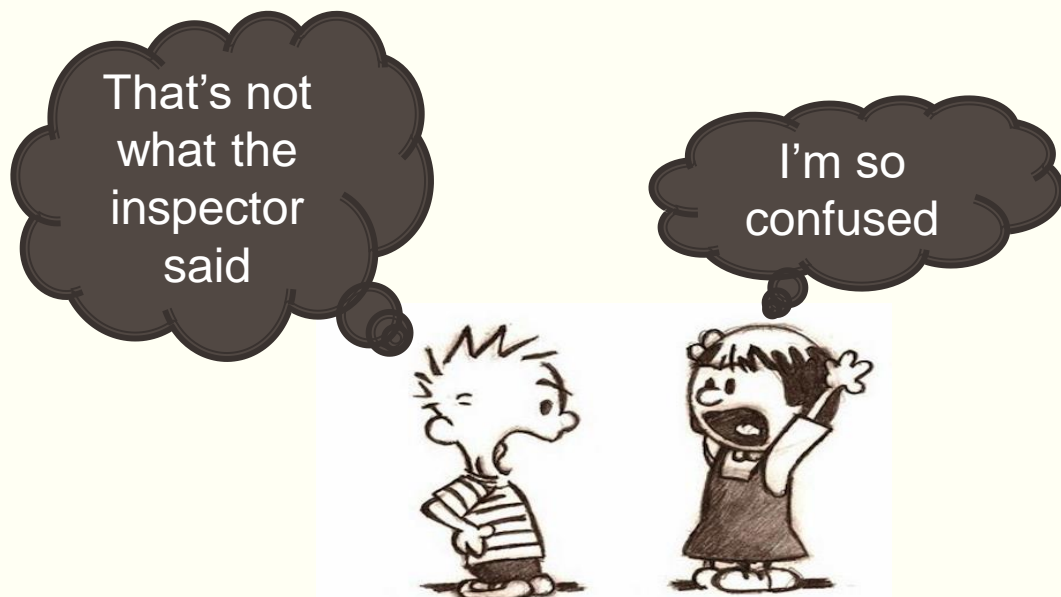
## ■ Criminal

- Knowing/intentional violations
- Burden of Proof: Beyond a reasonable doubt
- Results:
  - incarceration
  - conditions of probation
  - restitution
  - criminal fines
  - community service

# Handle Conflicting Agency Directives

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What happens in a situation when a State DEQ and EPA tell you different things?



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Federal law serves as the minimum or floor.

State laws can be and often are more stringent.

EPA overfile action.

# Establish Best Practices....





# Environmental Headlines, Priorities, and What's Next...

## Recent Enforcement Headlines

- “Company tampered with its air pollution monitoring equipment and falsely reported data to environmental regulators.”
- “Crestwood Official Convicted Of Falsifying Reports To Conceal Village’s Use Of Well In Drinking Water Supply”
- Attorney General “Charges Three with Multiple Felonies in First Stage of Flint Water Crisis Investigation”
- “Laboratory Manager Sentenced to 21 month in prison for falsifying water sampling for clients.”
- “Company and owner indicted for illegally storing hazardous waste and releasing hazardous air pollutants”

# Understanding Key Enforcement Triggers

- Significant environmental harm or public health impacts
- Deceptive or misleading conduct
- Operating outside of the regulatory system
- Repetitive violations

# Emergence of Analytics

- Compliance reporting is becoming significantly more visible
- EPA and States are aggressively moving to electronic reporting in all environmental sectors – with DMRs at the forefront (eDMRs)
- “Governmental Data Silos” are lessening
- EPA and states will become far more efficient in spotting anomalies with the advent of electronic reporting and analytical trend analysis (NextGen Compliance)
- Third Party groups (eNGOs, community groups, and occasionally competitors) are utilizing this newly transparent data to advocate and litigate.
- Successful analysis can be a much quicker entre to enforcement

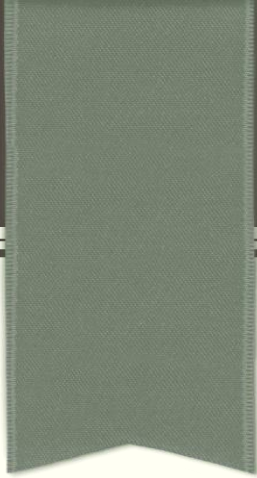
# At the end of the day . . . how do I assess my compliance?

- What permits am I required to have and do I have all of them in place? Do I know the terms?
- Am I incorporating the “what’s new” in my work (environmental justice, NGO scrutiny, the latest “Flint Effect,” etc.)
- Are my operators/employees trained appropriately and do they understand their responsibilities - and their “operating environment”?
- Am I confident there are external controls to oversee my team’s compliance? Avoid being “one person deep...”
- How will I (and my team) respond when exceedances or incidents occur?
- Have I built effective relationships with my regulators –including local emergency response officials?
- Does the C-suite (and other business units) support and understand our work?
- Do employees **really** feel empowered to “stop the work” for EHS?

# Key Takeaways

- Scrutiny of operations is at an all time high
- Focus on accurate reporting – Not just “meeting the permit. . .”
- Don’t delay elevating serious compliance concerns – time lags are red flags to regulators
- Exceedances are explainable, false statements are not
- Transparency is paramount
- Build redundancy and controls so individual operators cannot solely bind the company
- Beware of clients/contractors who don’t share a compliance culture





THANK YOU

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