

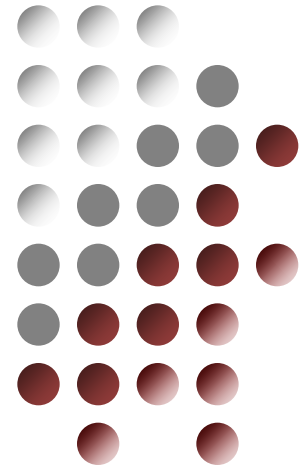
Environmental Enforcement Trends in the Midwest

James T. Price
June 20, 2011

Missouri Waste Control Coalition Conference

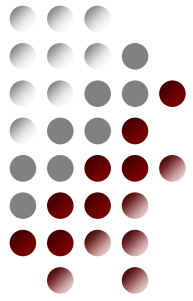
Lake of the Ozarks, Missouri

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Contact Information



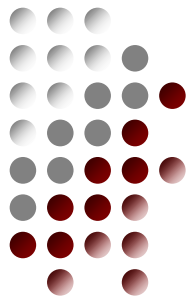
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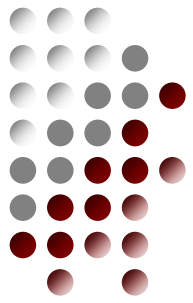
Obama Administration Enforcement Themes



- Tougher
- Penalties are higher
- Get to Penalties Quicker
- Transparency/Publicity
- Criminal Charges

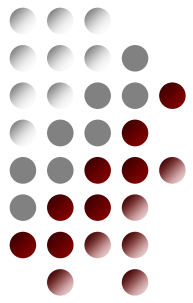


EPA National Enforcement Priorities, FY 2011 - 13



- Keeping raw sewage and contaminated stormwater out of our waters
- Cutting animal waste to protect surface and ground waters
- Reducing widespread air pollution from the largest sources, especially the coal-fired utility, cement, glass, and acid sectors

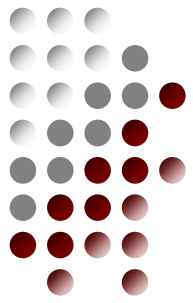
EPA National Enforcement Priorities, FY 2011 – 13, cont'd



- Cutting toxic air pollution that affects communities' health
- Assuring energy extraction sector compliance with environmental laws
- Reducing pollution from mineral processing operations

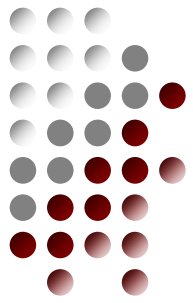


EPA Enforcement Priorities, Region VII



- Municipal sewage, CSOs, WWTPs
- Large power plant and facility NSR cases
- Carbon emissions; Greenhouse gases
- Chemical management: Prevention Matters!
- Risk Management Plans
- Environmental releases
- RCRA: Hazardous waste management
- Cleanups: Enforcement vs. voluntary programs

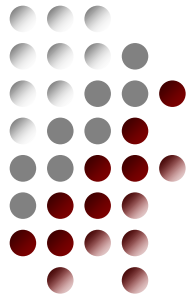
More Aggressive Environmental Regulation and Enforcement



- Manufacturing
- Distribution/logistics
- Food storage
- “Dirty” service industries
- Construction
- Laboratories
- Energy
- Recycling
- Financial



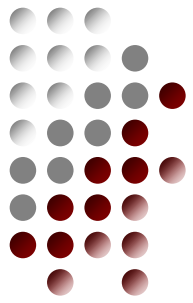
Hazardous Waste



- Tougher Inspections, Enforcement
- Hazardous Waste Determinations
 - - Waste vs. Product
 - - Laboratories
 - - Older, Off-Spec Materials
 - - Recycled, Reusable Materials
- Environmental Reporting, Disclosure



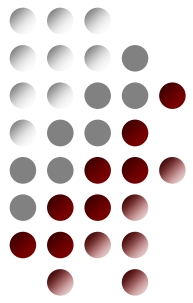
RCRA Hazardous Waste: Top 10 Violations



10. Failure to update notifications of haz waste activity
9. Failure to report haz waste activity and pay fees
8. Universal waste: Batteries, lamps, etc.
7. Used oil
6. Satellite accumulation
5. Inadequate LQG contingency plans
4. Marking and labeling
3. Open containers
2. Training, records of training
- 1.



RCRA Hazardous Waste: Top 10 Violations

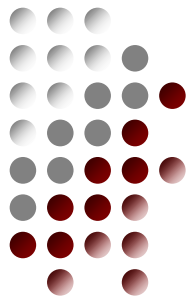


No. 1: Failure to determine whether a material is a hazardous waste

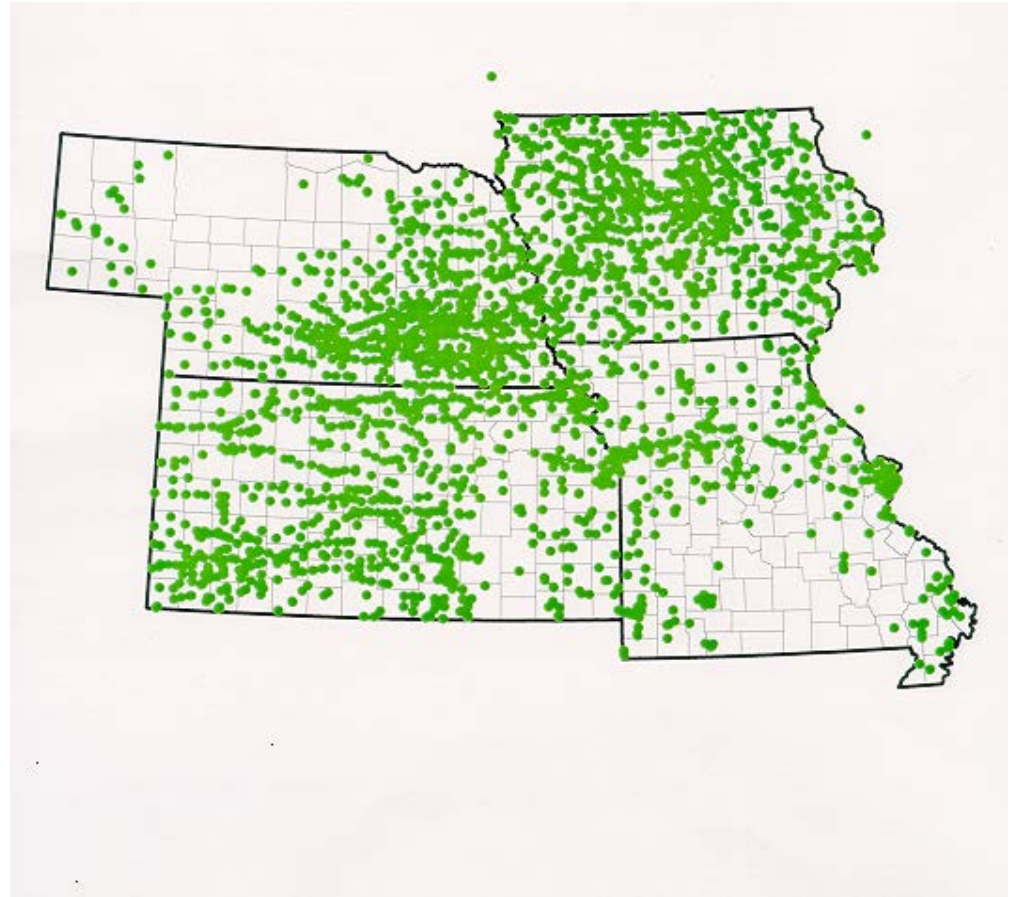
Bonus: Improper disposal of waste materials



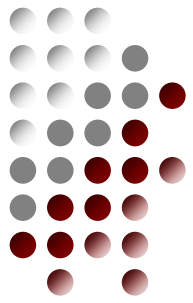
Risk Management Plans: EPA Region 7 RMP Facilities



- 2,487 RMPs
- Approx 20% of the U.S. total
- High Impacts: Chemical manufacturers, fertilizer distribution, water treatment



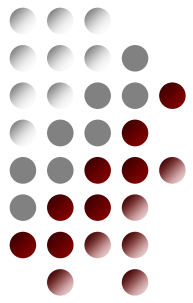
EPA Enforcement Trends 112(r)



- More onsite inspections
- Higher penalties
- Compliance orders (inspections and mechanical integrity – good engineering practices)
- General Duty Clause 112(r)(1) enforcement



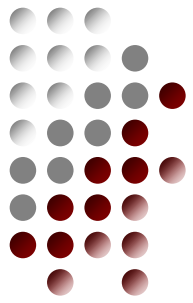
EPA Enforcement Trends 112(r) – What's Causing the Shift



- Enforcement in past - did the company file?
 - - Shift away from 1999 filing deadline; on-site inspections
- EPA/OIG Report Feb. 2009 Recommendations:
 - Identify facilities that have not yet filed RMPs;
 - Target higher-priority facilities for inspections.
- News of chemical accidents, industrial explosions



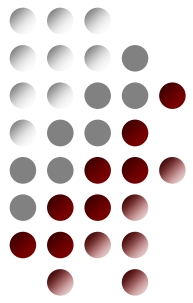
112(r) Enforcement Misc. Issues



- Changes to SEP Policy
- Intersection with CERCLA/EPCRA
- Increased employee participation in RMP inspections

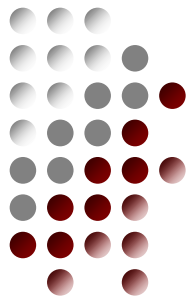


Current Issues in Air Emissions



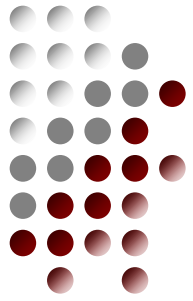
- More stringent emissions limits
- New emissions requirements being issued, affecting smaller operations
 - Paint stripping and coating
 - Stationary engines
- Compliance certification
- Modification vs. repair
- Greenhouse gas emissions

Current Wastewater Discharge Issues



- Tightening discharge standards
- Impacts on direct dischargers
- Impacts on discharges to POTWs
- Citizen suits

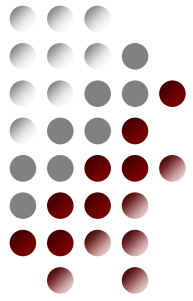
Stormwater



- Stormwater management
 - - Land disturbance activities
 - - Potential impact to lenders



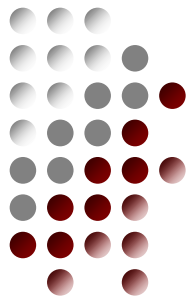
Environmental Inspections



- Multimedia inspections
- Compliance across programs

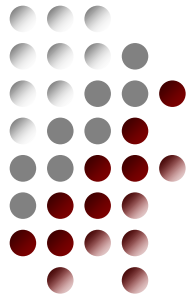


How to Respond to Agency Inspections – Pre-Inspection



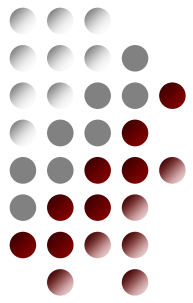
- Policies and Procedures
 - First Points of Contact
 - Escort Procedures
 - Training
 - - Search warrant? - How to answer Qs
- EHS File Review
 - Privileged Documents
 - Outdated contacts and training files

How to Respond to Agency Inspections – During Inspection



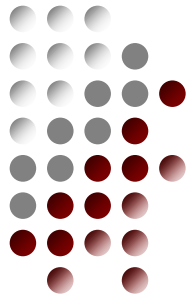
- Opening Conference
- Considerations for Escorts
- Employee Interviews
- Closing Conference

How to Respond to Agency Inspection – Post-Inspection



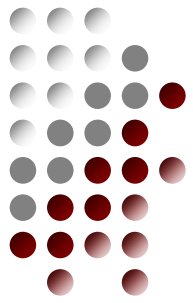
- Immediate Steps
 - Corrective action
 - NOV issuance
 - Prepare responses; assert legal arguments
- Long-term Steps
 - Seek to avoid enforcement action and/or negotiate settlement
 - Improve procedures and training
 - Avoid repeat violations

Environmental Auditing



- Privileged?
- Opportunities
- EPA's Environmental Audit Guidance and Its Limitations
- Limits of voluntary disclosure
- Strategic considerations

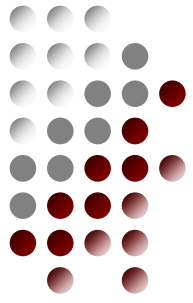
Creative Settlement Opportunities



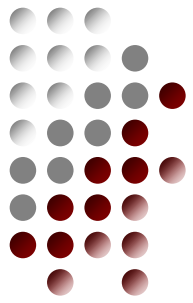
- Supplemental Environmental Projects



Liability for Contaminated Properties

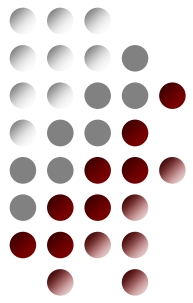


Landowner Liability Under Federal Superfund Law & State Counterparts



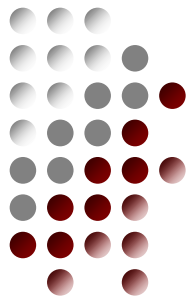
- Plays role in facility expansions
- Trend: State voluntary cleanup programs reduce costs
 - - But, do they move quickly enough?
- Current issues:
 - - Institutional controls
 - - Vapor intrusion

Preparing Facilities and Clients for a New Enforcement Regime



- Penalties Higher Than Ever Before
- EPA Pressure on States
- Multimedia emphasis
- Prevention emphasis
- New methods: Mining data to develop targets; aerial inspections; subpoenas
- Environmental Audits
- Attorney-Client Privilege Issues and Related Matters
- Preparation, training

Questions?



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