



# Enforcement Process

*The potential monetary cost of non-compliance*



# The big number..

Penalties can be as high as  
\$37,500 per violation per day



# Enforcement Process - Agenda

- Case Review Officer
  - ▣ Review of documents / determination of violations
  - ▣ Enforcement options
- Calculating the Penalty
- Negotiation Process
- Case Studies



# Case Review Officer's Role

- Help finalize inspection report
  - ▣ Mail it to facility
- Ensure multimedia inspection form is distributed
- Review documents and collect further information



# Case Review Officer's Role

- ❑ Determine path of enforcement
- ❑ Discuss information with enforcement team and attorneys
- ❑ Determine what tools to utilize to ensure quick return to compliance



# Case Review Officer: Collecting the Information and Evidence ...

- ❑ Background search
- ❑ Information from other federal/state/local agencies
- ❑ Compliance history – various EPA databases
- ❑ Inspection documentation
- ❑ Documents received from facility post-inspection
  - Informal information gathering
  - Formal written information requests



# Potential Enforcement Outcomes

- ❑ Closure of case/compliance
- ❑ Compliance assistance letter
- ❑ Finding of Violation (FOV)
- ❑ Administrative Order
- ❑ Expedited Settlement Agreement (ESA)
- ❑ Administrative Civil Complaint
- ❑ Judicial Civil Complaint (DOJ cases)
- ❑ Criminal Charges (not a CRIB action)





# Our form of a traffic ticket - ESAs

- ❑ Easily correctable violation(s)
- ❑ Not a CAA Title V facility
- ❑ No history of violation in past 5 years (corporate wide)
- ❑ No accident in last 5 years that is attributed to the violation
- ❑ Total penalty can not add up to more than \$7,500





# ESAs – Facility Will Receive

- A letter indicating the violations found
- A form to respond back to EPA discussing how they have or will come into compliance
- The penalty to be paid

**No negotiations occur**



# Traditional Enforcement

**Penalty = Economic Benefit + Gravity**



# Economic Benefit Component

- Value of the money the facility saved by
  - ▣ Delayed or avoided costs
  
- Examples include:
  - ▣ Failure to develop program
  - ▣ Delayed or missed maintenance of equipment, such as tank inspections / valve replacement
  - ▣ Missed training / compliance audits / PHAs



# Gravity Component

- ❑ Seriousness of each violation
- ❑ Duration
  - ▣ Earliest date of noncompliance to date last violation was corrected
- ❑ Size of violator
- ❑ Other adjustment factors



# Adjustment and Mitigation Factors

- Degree of Culpability
  - ▣ Upward adjustment up to 25%
- History of Violation
  - ▣ Upward adjustment up to 50%
- Good Faith Reductions
  - ▣ Decrease up to 15% for cooperation
  - ▣ Decrease up to 15% for speedy compliance



# Adjustment and Mitigation Factors (cont.)

- Ability to Pay
- Offsetting Penalties Paid to Federal, State, Tribal, and Local Governments or Citizen Groups for the Same Violations
- Special Circumstances/Extraordinary Adjustments



# Assessing Seriousness of Violation

- Determine the **potential for harm and extent of deviation** for each violation

		POTENTIAL FOR HARM		
		Minor	Moderate	Major
EXTENT OF DEVIATION	Major	\$25,000	\$30,000	\$37,500
		\$20,000	\$25,000	\$30,000
	Moderate	\$10,000	\$15,000	\$20,000
		\$5,000	\$10,000	\$15,000
	Minor	\$1,000	\$3,000	\$5,000
		\$500	\$1,000	\$3,000





# Assessing Seriousness of Violation - Criteria

- Amount and toxicity of regulated chemicals
- Did violation cause or could reasonably cause an off-site exposure to the chemical?
- Proximity of the surrounding population
- Extent of community evacuation required or potentially required



# Assessing Seriousness of Violation – Criteria (cont.)

- Effect noncompliance has on the community's ability to plan for chemical emergencies
- Any potential or actual problems first responders and emergency managers encountered because of the facility's violation
- Number of processes at which the same violations occurred, and
- Prevention Program level



# Administrative Case

- ❑ Does not qualify for an ESA
- ❑ Not serious enough to involve DOJ
- ❑ Typically pre-negotiated penalties



# It's a DOJ case if any of the following

- ❑ Penalty >\$295,000
- ❑ It will take the facility more than 1 year to come into compliance (injunctive relief needed)
- ❑ Significant accident (fatality, multiple injuries, etc.)
- ❑ Nationally significant issue
- ❑ Multiple statute cases
  - ▣ EPCRA or RMProgram and RCRA/Air/Water



# Settlement Includes

- Come into compliance
  - ▣ Injunctive Relief (DOJ cases)
- Pay cash penalty
- Perform Supplemental Environmental Projects (SEP)
  - ▣ Improvements to facility (not required by law)
  - ▣ Community improvements
- File complaint and settlement documents with the court



# Closing the Case

- Case information available publically at:  
[www.epa-echo.gov/echo](http://www.epa-echo.gov/echo)
- Press Releases
- Case closure occurs when the following is completed
  - ▣ Penalty paid
  - ▣ SEP completed
  - ▣ Compliance achieved (including injunctive relief)



# Enforcement Trends

- Moving away from expedited settlements
- Penalties have risen since June 1999 due to
  - ▣ Duration of violations
  - ▣ Inspecting larger/more complex facilities
- More DOJ involvement during the past few years than previously



The background of the slide is a photograph of an industrial facility, possibly a refinery or chemical plant, with various structures and pipes. A large white rectangular box is overlaid on the center of the image, containing the text 'What others have experienced'.

# Case Studies

*What others have experienced*



# Case Study Ex. # 1: Midwest Farmers CoOp (Nehawka, Neb.)

- Initiating event:
  - ▣ Release of 300 pounds of anhydrous ammonia
  - ▣ Date: August 9, 2006
- Initiating activity: Written information request



# Case Study Ex. # 1: Midwest Farmers CoOp (Nehawka, Neb.)

- Results: NON and submission of EPCRA follow-up letters
- Other notes: RMP reportable accident due to environmental damages
- Open to close: approx. four months



# Case Study Ex. # 1: Midwest Farmers CoOp (Nehawka, Neb.)

- Initiating event: missed five-year update and had RMP reportable accident
- Date: May 22, 2008, CAA 112(r) inspection





# Case Study Ex. # 1: Midwest Farmers CoOp (Nehawka, Neb.)

## Results: ESA

- Updated program and plan
- Major components: industry standards and hazard review
- Penalty: \$1,020
- Open to close: approx. 10 months





# Case Study Ex. # 2: KAAPA Ethanol Facility (Minden, Neb.)

- Initiating event: CAA 112(r) Inspection on July 8, 2010
- Results: ESA
  - ▣ Major components: documentation of safe upper and lower limits, inadequate PHA follow-up, revise SOPs, conduct compliance audit.
  - ▣ Penalty: \$3,780
- Open to close: 32 months



# Case Study Ex. # 3: Frontier CoOp (Mead, Neb.)

- Initiating event: CAA 112(r) Inspection on June 27, 2007







# Case Study Ex. # 3: Frontier CoOp (Mead, Neb.)

- Results: Administrative Civil Complaint
  - ▣ Updated program and plan
  - ▣ Major components: maintenance and compliance audits
  - ▣ Unreported release of ammonia, neighbor sent to hospital, incomplete incident investigation
  - ▣ \$6,000 cash penalty, plus SEP estimated costs at \$82,500
- Open to close: 41 months (penalty paid within approx. 15 months)



# Case Study Ex. # 4: Chemcentral (Kansas City, Mo.)

- Initiating event: Feb. 7, 2007, accident/fire EPA R7 accident investigation





# Case Study Ex. # 4: Chemcentral (Kansas City, Mo.)

- Results: DOJ referral and civil complaint
  - Submit current Tier II report
  - Meet general duty obligations
  - Penalty \$225,000, plus repay \$150,713 of EPA's emergency response costs
- Open to close: approx. about 13 months



# Case Study Ex #5: NCRA (McPherson & Conway, Kan.)

## □ Initiating Events

- ▣ 20+ day flare event ( $>640,000$  lbs.  $\text{SO}_2$  & 6,900 lbs.  $\text{H}_2\text{S}$  released) in December 2005
- ▣ Inspections at both facilities in May 2006
- ▣ Formal information request in 2007



# Case Study Ex #5: NCRA (McPherson & Conway, Kan.)

- ❑ No Risk Management Program for all covered processes
- ❑ Did not inspect large worst-case vessels in time frames established by the industry
- ❑ Had not submitted Tier II reports for caverns
- ❑ Failed to timely report releases for 3 other events
- ❑ Data quality errors on TRI report







# Case Study Ex #5: NCRA (McPherson & Conway, Kan.)

## □ Settlement

- Cash Penalty - \$700,000
- Supplemental Environmental Projects - Spend approx. \$746,000 on equipment/services for emergency response/planning entities throughout McPherson city and county



# Case Study Ex #5: NCRA (McPherson & Conway, KS.)

## □ Settlement

### ▣ Injunctive Relief

- Risk management applicability study
- Third-party audit of Tier II and TRI information
- Detailed tank inspection timelines and documentation
- EPCRA/CERCLA release reporting compliance review and training
- Documentation of resolution of PHA and compliance audit findings

## □ Open to settlement: 6 years

- ▣ Closure estimated to be in 2016





# Case Study Ex #6: Tyson



- Initiating events:
  - ▣ 8 separate releases of anhydrous ammonia between 2006 & 2010
    - Multiple injuries and 1 fatality
  - ▣ Inspections at 6 facilities from 2008 to 2009
  - ▣ 3 formal information requests 2010 to 2011
- Date: 1<sup>st</sup> Inspection March 25, 2008

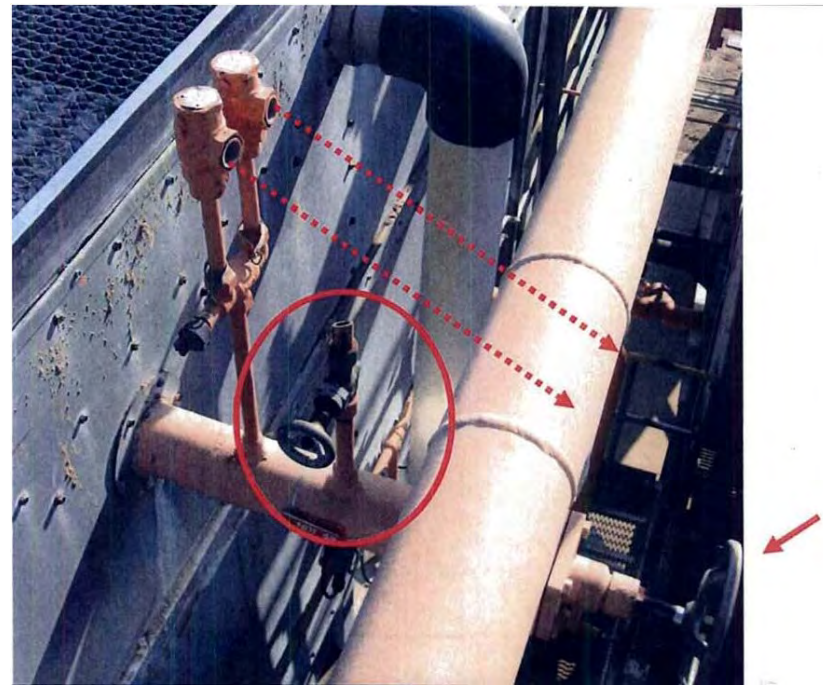




# Case Study Ex #6: Tyson

## □ Major findings:

- failure to follow industry standards
  - co-location boiler/refrigeration machinery
  - replacing safety relief valves
- prevention program
- reporting on RMP





# Case Study Ex #6: Tyson

- Results: DOJ referral and civil complaint
  - ▣ Penalty: \$3.95 million cash
  - ▣ SEPs: \$300,000 in ER equipment to fire departments in 8 EJ areas
  - ▣ Injunctive Relief: Conduct pipe testing and third party audits at all 23 facilities
- Open to settlement: approx. 5 years
  - ▣ Closure estimated between 2015-2017



The background of the slide is a photograph of an industrial facility, possibly a refinery or chemical plant, with various structures, pipes, and storage tanks. In the foreground, there are railroad tracks. A large white rectangular box is overlaid on the center of the image, containing the text "Help! What should I do next?".

# Resources

*Help! What should I do next?*



# Self-Disclosure Policy

- Self-Disclosure Policy is under review





# Websites

- [www.epa.gov/region7/chemical\\_risk\\_prog](http://www.epa.gov/region7/chemical_risk_prog)
- Ethanol Manual
  - [www.epa.gov/region7/priorities/agriculture/pdf/ethanol\\_plants\\_manual.pdf](http://www.epa.gov/region7/priorities/agriculture/pdf/ethanol_plants_manual.pdf)



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# Questions?

