

# AWMA MIDWEST EPA LEGAL UPDATE

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EPA REGION 7



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# Flint



# Protecting Public Health

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Is the right data being collected to know if health is at risk?

If health is at risk, are we acting timely to address it?

Is the data being shared with people who deserve to know?



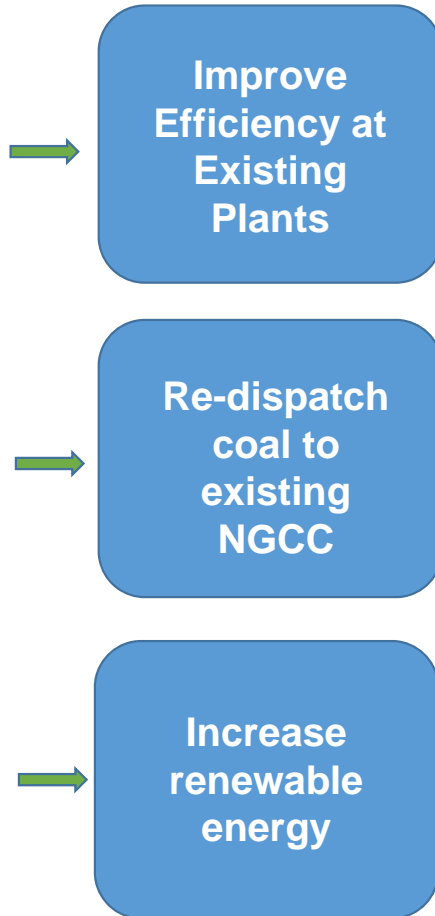


2016



# Available Compliance Options

## CPP's Three Building Blocks



### Additional options:

- ❖ Demand-side EE
- ❖ New nuclear/upgrades to existing nuclear
- ❖ Combined Heat & Power
- ❖ Biomass
- ❖ Natural gas co-firing/convert to natural gas
- ❖ Transmission & distribution improvements
- ❖ Energy storage improvements
- ❖ Retire older/inefficient power plants
- ❖ Trading



# Iowa Leads U.S. in In-state Wind Generation

Installed Capacity (MW)				Percentage of In-State Generation	
Annual (2014)		Cumulative (end of 2014)		Actual (2014)*	
Texas	1,811	Texas	14,098	Iowa	28.5%
Oklahoma	648	California	5,917	South Dakota	25.3%
Iowa	511	Iowa	5,688	Kansas	21.7%
Michigan	368	Oklahoma	3,782	Idaho	18.3%
Nebraska	277	Illinois	3,568	North Dakota	17.6%
Washington	267	Oregon	3,153	Oklahoma	16.9%
Colorado	261	Washington	3,075	Minnesota	15.9%
North Dakota	205	Minnesota	3,035	Colorado	13.6%
Indiana	201	Kansas	2,967	Oregon	12.7%
California	107	Colorado	2,593	Texas	9.0%
Minnesota	48	North Dakota	1,886	Wyoming	8.9%
Maryland	40	New York	1,748	Maine	8.3%
New Mexico	35	Indiana	1,745	New Mexico	7.0%
New York	26	Michigan	1,531	California	7.0%
Montana	20	Wyoming	1,410	Nebraska	6.9%
South Dakota	20	Pennsylvania	1,340	Montana	6.5%
Maine	9	Idaho	973	Washington	6.3%
Ohio	0.9	New Mexico	812	Hawaii	5.9%
Massachusetts	0.6	Nebraska	812	Illinois	5.0%
		South Dakota	803	Vermont	4.4%
Rest of U.S.	0	Rest of U.S.	4,941	Rest of U.S.	0.9%
<b>TOTAL</b>	<b>4,854</b>	<b>TOTAL</b>	<b>65,877</b>	<b>TOTAL</b>	<b>4.4%</b>

\* Based on 2014 wind and total generation by state from EIA's *Electric Power Monthly*.

## Nine States Exceed 12% Wind Energy

- Iowa top 3 in 2014 installed capacity
- 23 states had >500 MW of capacity at end of 2014 (16 > 1 GW, 10 > 2 GW)
- 2 states have >25% of total in-state generation from wind (9 states > 12%)



## Supreme Court Stays the Clean Power Plan

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- On February 9, 2016, the Supreme Court stayed implementation and enforcement of the Clean Power Plan pending judicial review. The Court's decision was not on the merits of the rule.
- EPA firmly believes the Clean Power Plan will be upheld when the merits are considered because the rule rests on strong scientific and legal foundations.
- For the states that choose to continue to work to cut carbon pollution from power plants and seek the agency's guidance and assistance, EPA will continue to provide tools and support.
- EPA will make additional information available as necessary.

### Key Points

- Implementation and enforcement are on hold.
- Initial submittals not required on September 6, 2016.
- EPA will continue to work with states that want to work with us on a voluntary basis.

# CPP Legal Issues - Merits

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1. Because EPA regulated air toxics at power plants under Section 112 of CAA (“MATS”), is it permissible to also regulate GHG under Section 111?
2. Is it permissible to include “beyond fence line” controls as a “best system of emission controls” in a Section 111 rule?

# Clean Water Rule Litigation

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Three phases:

1. Stay: 6<sup>th</sup> Circuit has stayed the rule.
  - “Petitioners have demonstrated a substantial possibility of success on the merits”
2. Jurisdiction: 6<sup>th</sup> Circuit has ruled it has jurisdiction.
  - Next: En banc rehearing? SCOTUS?
3. Merits: ??

# Other Rulemaking Issues: Running Through the Tape

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112r revisions

CASPR – update to address 2008 standard (rule based on 1997 standard)

MATS - Rulemaking to address S. Ct decision – late spring

Regional Haze - summer

State Authorization for new UST Rules

GHG rule for heavy duty vehicles - summer

NAAQS

- No new NAAQS likely
- SO<sub>2</sub> Designationss
- Ozone: New standard being litigated

# Bridgeton Landfill called 'Dirty Bomb,'

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**BRIDGETON, Mo. (KSDK)** - Some environmentalists are now calling it a "dirty bomb." It's at the core of a heated debate in Bridgeton on whether or not a landfill poses a serious radioactive risk to the public.

The Bridgeton Landfill is emitting underground heat and giving off a nasty, permanent stench in the area. The risk may be that it sits right next to the West Lake Landfill, a known storage site to radioactive materials from the early 1970s.



# Contaminated Sites: Vapor Intrusion

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# Nutrients

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Iowa NPDES Withdrawal Petition

MO Nutrient Criteria


Iowa Tile Drain Case



# Future National Enforcement Initiatives: 2017-19

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## Existing NEIs that Continue:

- NSR/PSD: coal, glass, acid plants, cement
  - Natural Gas Energy Extraction
  - CAFOs
  - Raw Sewage (CSOs/SSOs)
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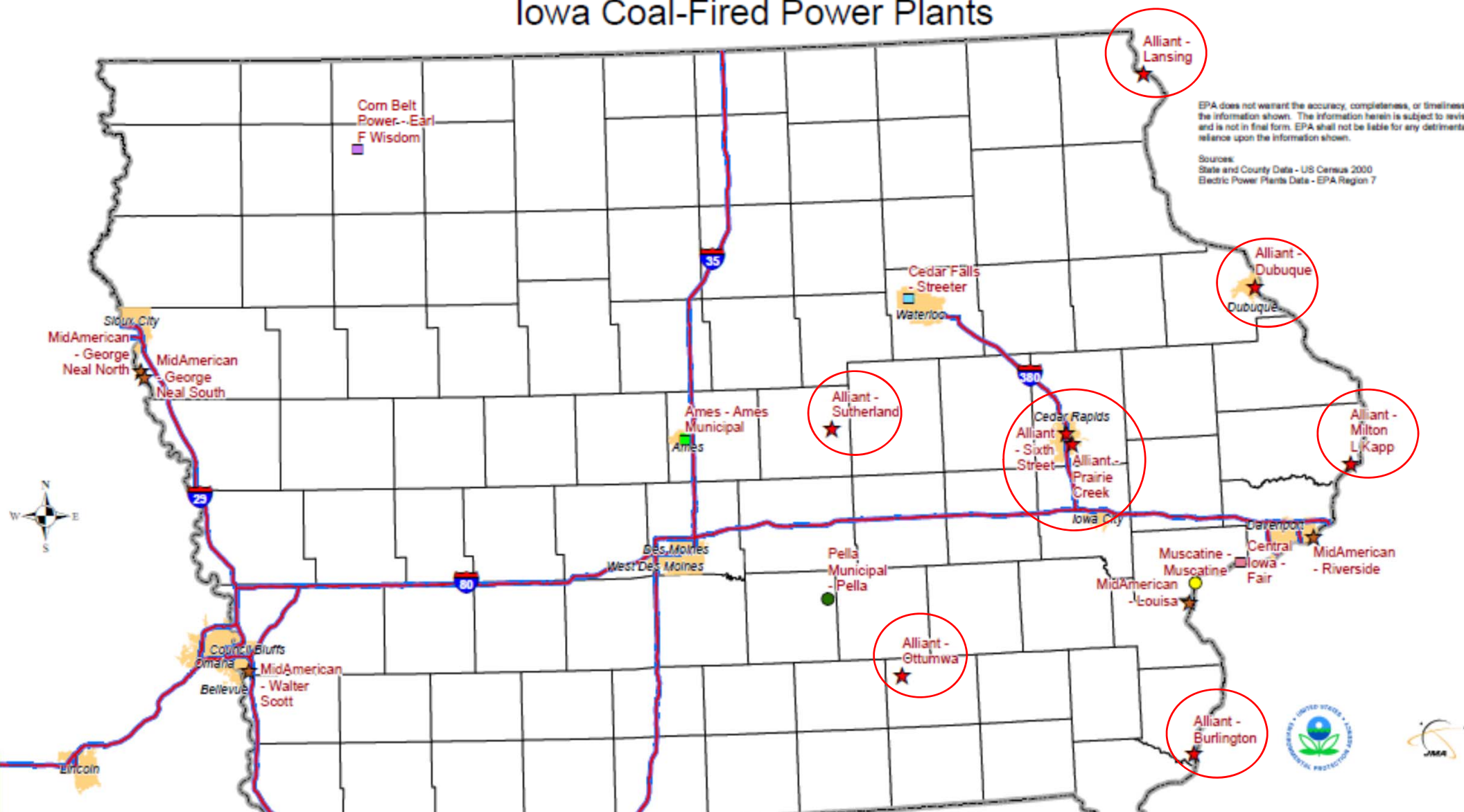
# Interstate/Alliant Settlement

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- Company's coal-fired power plants to invest \$620 million to reduce SO<sub>2</sub> and NO<sub>x</sub> emissions by 32,000 tons per year .



# Iowa Coal-Fired Power Plants



# Mitigation projects



UTILITY-SCALE  
PHOTOVOLTAIC ARRAY



ANAEROBIC MANURE  
DIGESTION

*BACON HILLS FARMS IN NEBRASKA - PHOTO BY DEAN  
HOUGHTON*

# Ameren Litigation

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# Expanded NEI: Cutting Toxic Air Pollution

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Approximately 30 inspections in FY 16:

- Styrene and TCE/PCE emitters
- VOC emitters in high population areas
- Tank farms
- Landfills
- Sources contributing to Ozone, SO<sub>2</sub>, and Lead attainment concerns
- Electric arc furnaces
- Glass manufacturing




# New NEI: Industrial Wastewater Dischargers

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Reduce sources of water body impairment: nutrients, metals, organic enrichment

Focus on five sectors:

- Chemical Manufacturing - 139 facilities
  - Food Processing – 198 facilities
  - Mining – 229 facilities
  - Primary Metal Manufacturing - 16 facilities
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# Level Playing Field and Deterrence: *U.S. v STABL*

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- Pretreatment case involving Lexington, NE meatpacker
- District Court: \$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
- ***8th Circuit affirmed, August 27, 2015***

# New NEI: 112r and General Duty Clause

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Reduce risk of accidental releases at Industrial and Chemical Facilities

Focus on high-risk facilities in five sectors:

- Refineries
  - Chemical Manufacturing
  - Ammonia Refrigeration
  - Fertilizer Distribution
  - Gas Processing Plants
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# Barton Solvents Settlement

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# Core Enforcement: Reduce Stormwater Runoff Pollution

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- Scrapyards/recyclers
- Railyards
- Sand and gravel
- DOTs



# Stormwater Settlement Example: Auto Salvage Facility in Northwest Iowa

- Construct wall between facility and park to stop runoff/debris from getting into park
- Reconfigure facility to move most operations and materials under roofs
- Enlarge stormwater retention pond, pipe stormwater away from park area
- \$120,000 penalty
- Mitigation: Clean debris from the park and the banks of the pond, followed by laying sod in park.



# Core Enforcement: SPCC and FRP

Bulk storage facility in Willow Springs, Missouri

## Violations:

- No Facility Response Plan
- Inadequate secondary containment
- Stormwater violations

## Settlement:

- Five foot berm
- \$25k cash penalty
- \$180k of SEPs
  - **Leak detection w/remote notification**
- Emergency response equipment for locals



# Core Enforcement: TSCA Pb Paint Rule Enforcement

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# Core Enforcement: RCRA

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In FY 2015, 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

# RCRA Enforcement Priorities

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Under-reporters/non-filers

Large TRI Reporters

Facilities subject to Subparts BB/CC (RCRA Tanks)

Pesticide Mfg. & Formulators

# SEPs in lieu of Cash Penalties

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Penalty offset depends on project quality

Most common projects:

- Conservation land

- Stream restoration

- Green infrastructure

- Energy Efficiency

- Emergency Response Equipment

Some limitations



# Next Generation Compliance

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## THE ROAD AHEAD

# Compliance Challenges

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- Pollution
- Noncompliance
- Information gaps
- Single facility inspection model
- Larger universe
- Budgets declining



**Real Time Data + Transparency**

**=**

**Changed Behavior**

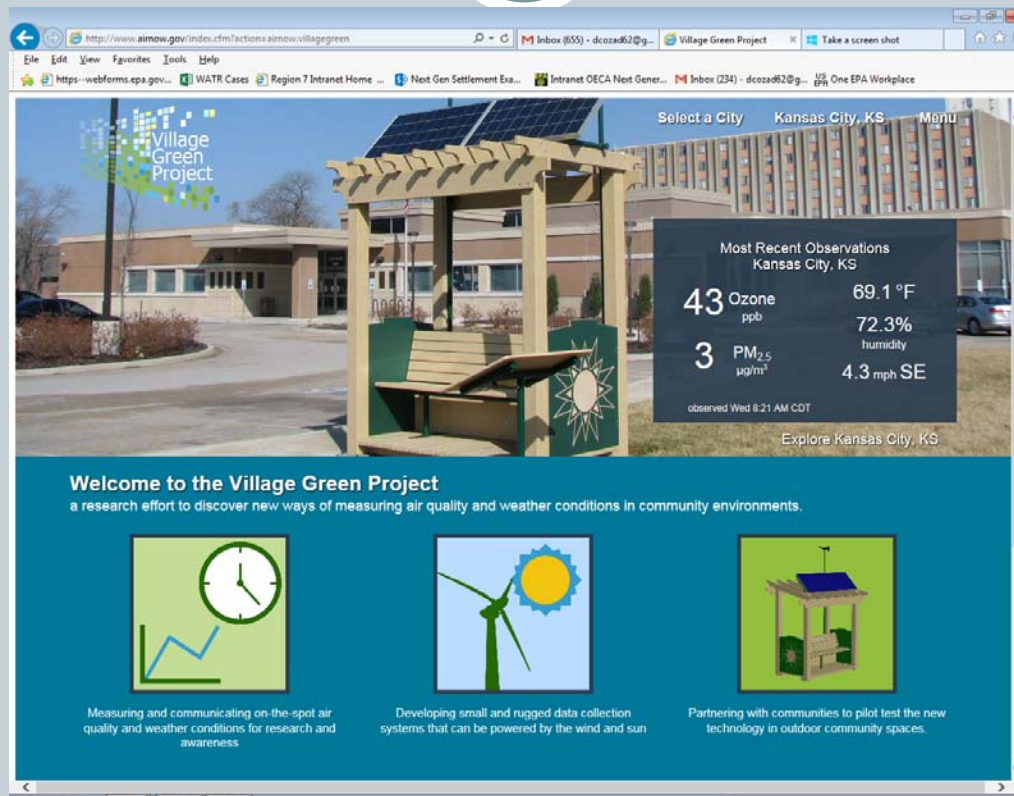
# Next Gen Enforcement Tools

35

- Advanced Monitoring
- E-Reporting
- Transparency
- Third Part Verification

# Technology Paradigm Change

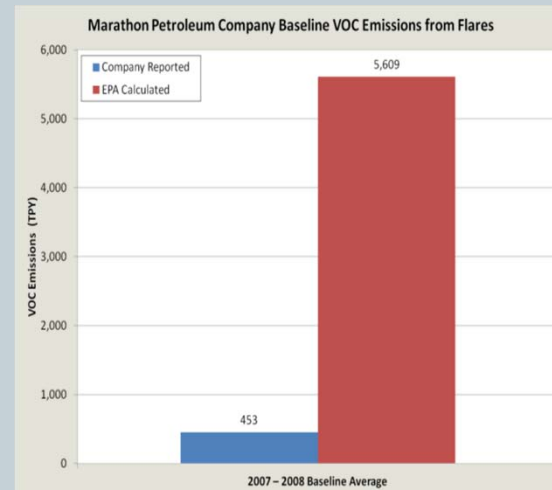
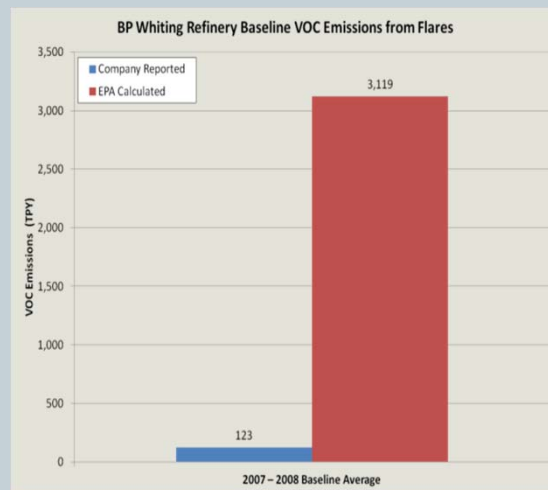
36



# Advanced Monitoring

37

## An example from flaring enforcement



# Incorporating Next Gen in Settlements

*Example* - CAA settlement with BP Whiting (Indiana)

38



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

# BP Whiting's Public Website of Fenceline Monitoring Results

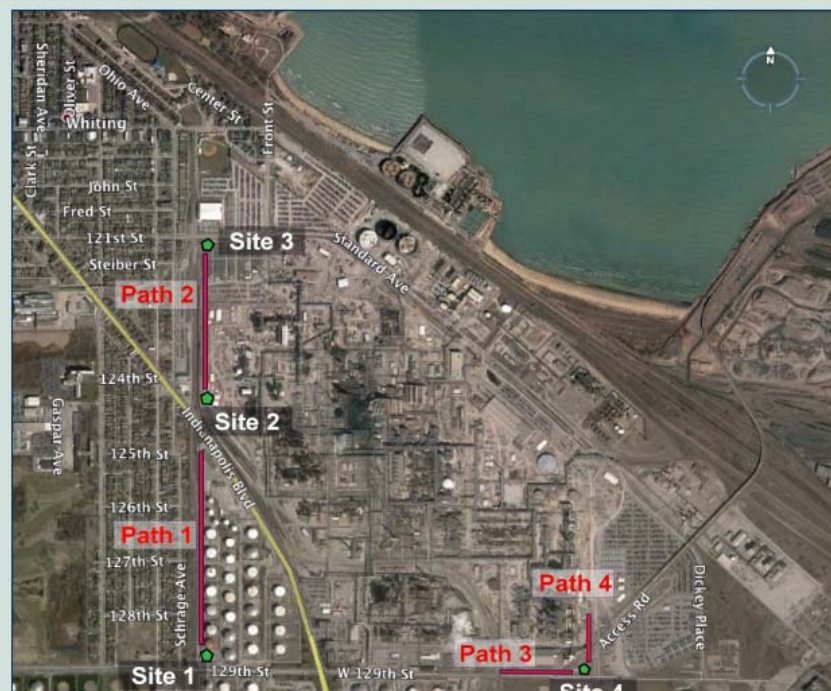
AECOM

BP Refinery Whiting, Indiana

AIR QUALITY MONITORING PROGRAM

The air monitoring network is shown in the map below. There are four air quality and meteorological monitoring stations shown in white lettering. These stations (which are referred to as "fixed stations") monitor the air for sulfur dioxide, hydrogen sulfide, total reduced sulfur (TRS) compounds, benzene, toluene, pentane, and hexane along with local weather conditions. In addition, adjacent to the fixed stations are four "open path" monitors. Open path monitors send ultra-violet light beams along a path. Chemical compounds are measured over the distance the path covers. The open path monitors are shown in red on the map. The open path monitors measure benzene, toluene, xylenes, carbon disulfide, carbonyl sulfide, and ozone.

[Click here for larger image.](#)



# EPA Rule for Petroleum Refineries

40

- Refineries must conduct ambient fenceline monitoring
- Data available to public
- Action level exceedances require corrective measures



# Coal Ash Rule

41

- Transparency
- Third Party Certifications

