

Law and Order Pretreatment Style



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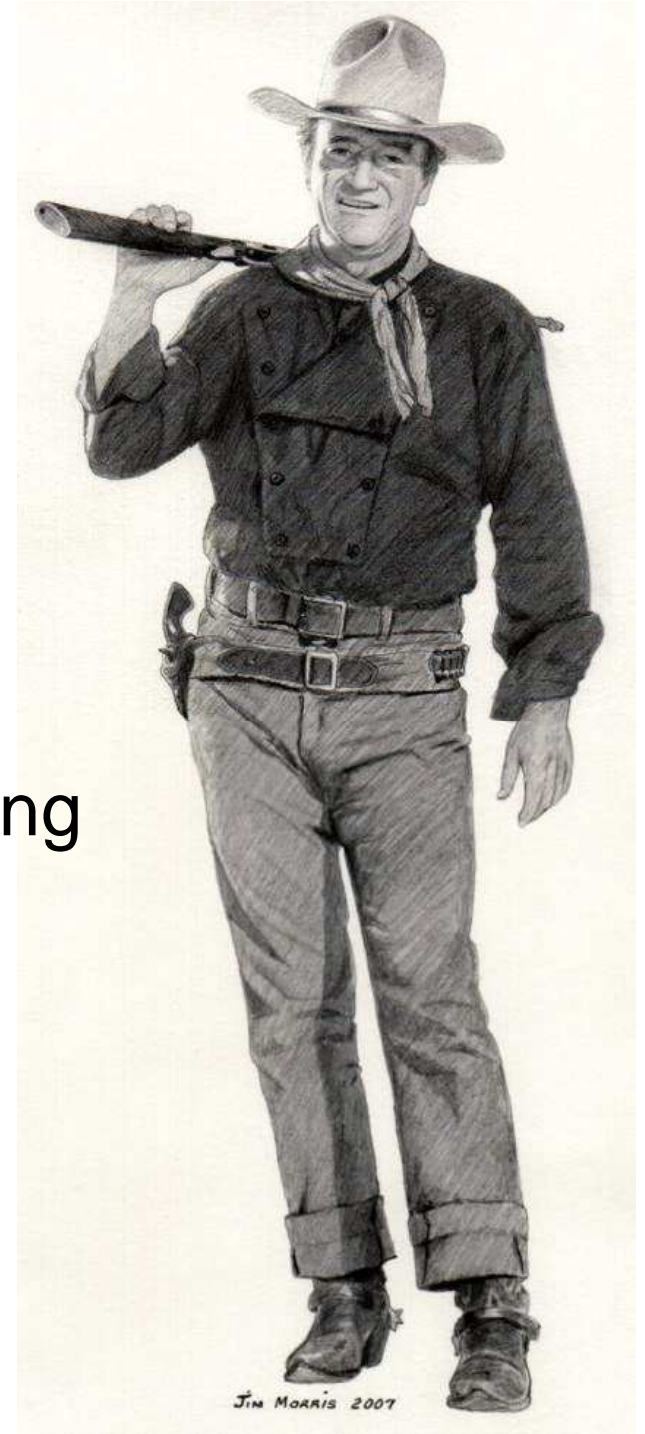
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Pollution Prevention Workshop
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Rick Gaskins
Executive Director
Catawba Riverkeeper Foundation
704.679.9494
rick@catawbariverkeeper.org



Overview

- Background
- The Environmentalist Perspective
- The Discharger Perspective
 - Common problems
 - Avoiding problems (by addressing the root causes of common problems)
 - Defense Strategy
 - Settlement Negotiations
- Conclusions

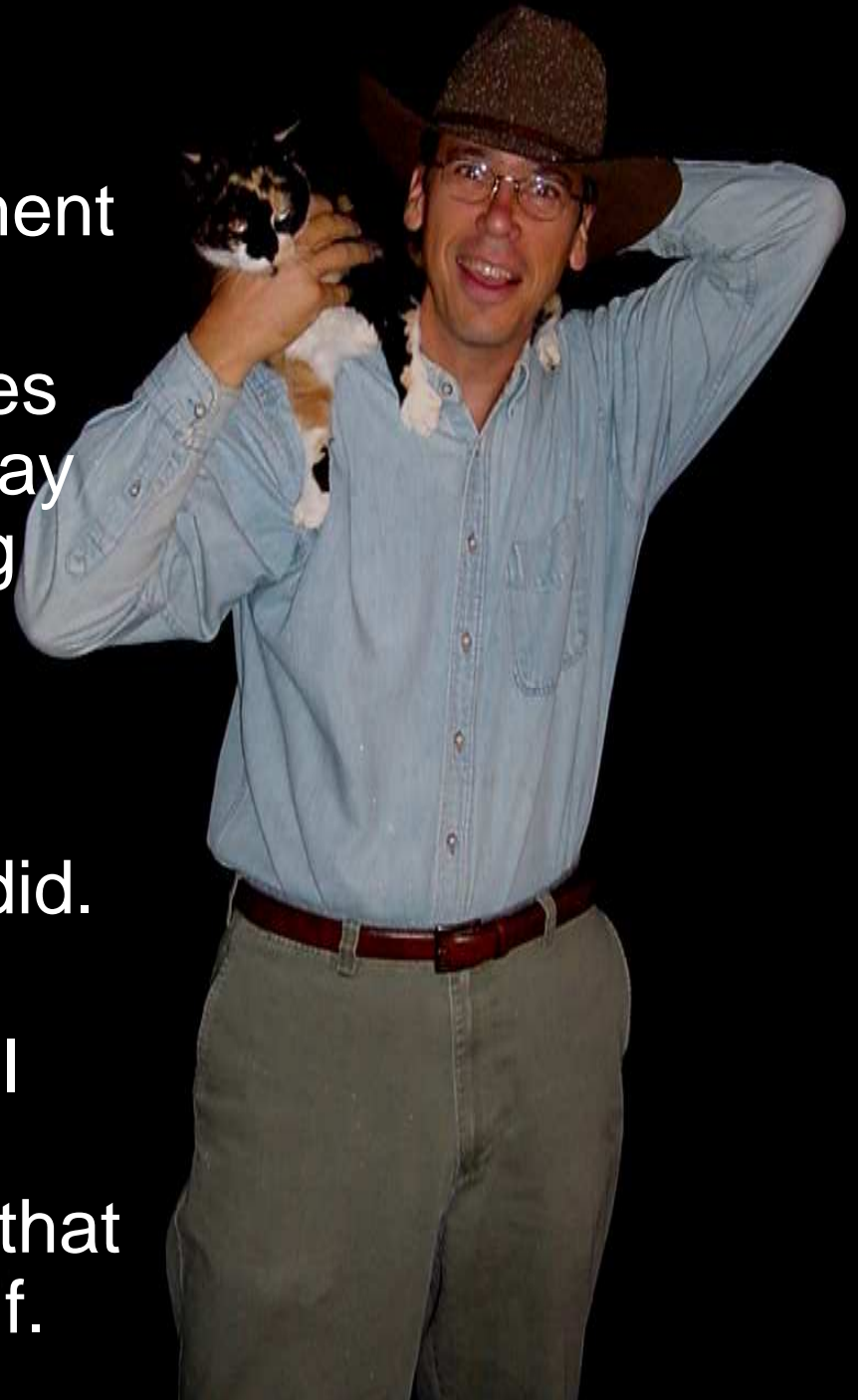


Background

The objectives of the Pretreatment Program are to prevent the introduction of pollutants to a POTW (sewerage system or treatment works) that may cause Pass Through of the pollutants, Interfere with the normal treatment process(es) and increase the disposal options of sewage sludge.

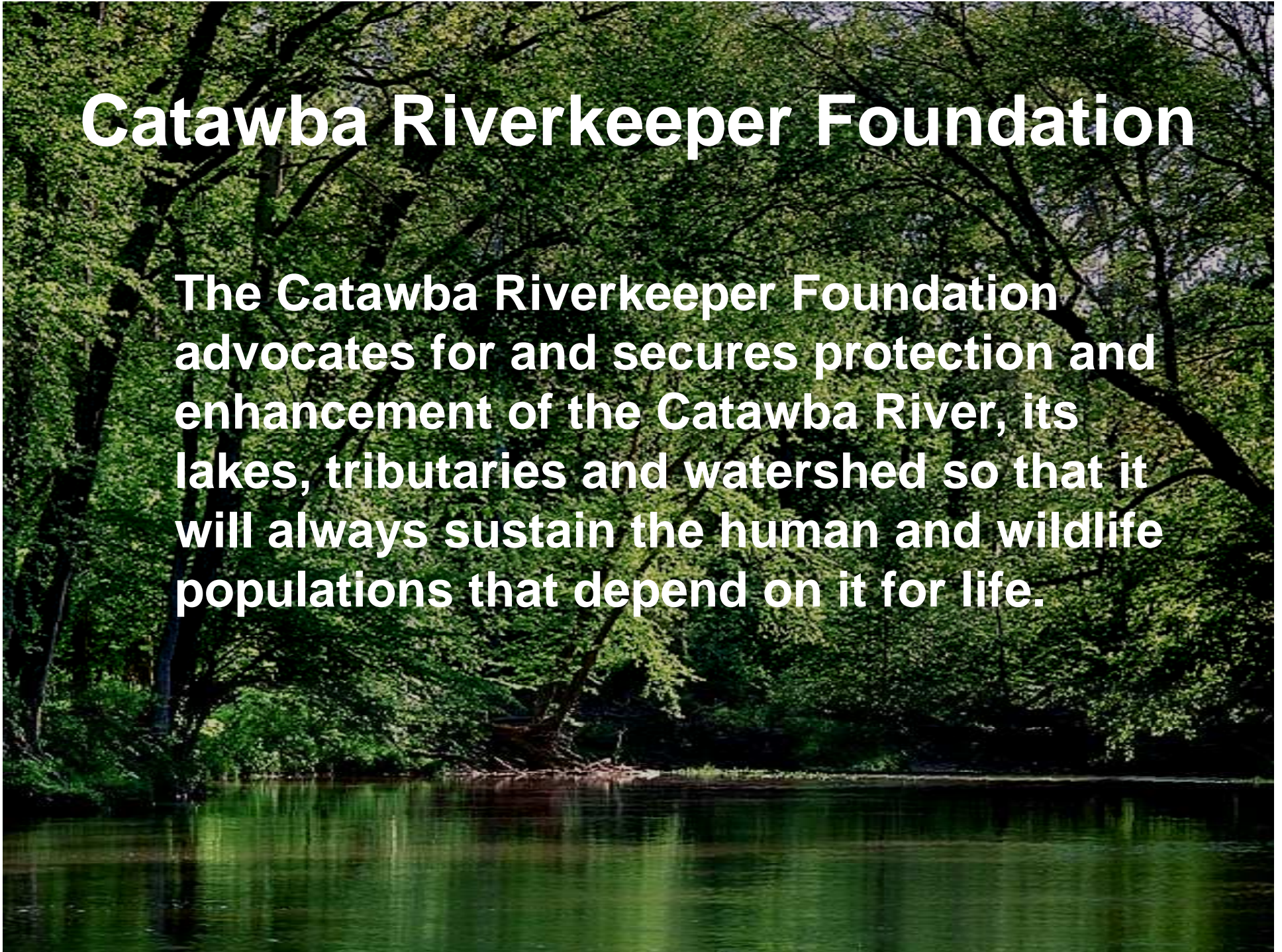
Background

- In my experience, pretreatment work is like herding cats
 - As an engineer, employees usually found an easier way to do things than following the rules.
 - As a lawyer in private practice, I had virtually no control over what clients did.
 - As the head of an environmental non-profit, I have little control over volunteers and members that like to speak on our behalf.



Catawba Riverkeeper Foundation

The Catawba Riverkeeper Foundation advocates for and secures protection and enhancement of the Catawba River, its lakes, tributaries and watershed so that it will always sustain the human and wildlife populations that depend on it for life.



The Environmentalist Perspective

- Municipalities and environmentalists should be on the same side of most issues (protecting the environment), but ...



- Environmentalists and the public often consider the local POTW to be the bad guy with the black hat or the bad sheriff rather than the sheriff with the shiny star.
- We hear about the bad stuff (spill and discharge violations), but don't hear about the good stuff you are doing.

The Environmentalist Perspective

- We receive frequent complaints and “tips” about illegal activities at POTWs or reports of discharges of concern from POTWs.
- Membership pushes us to oppose every new WWTP, but collectively WWTPs are often better than the alternatives.



The Environmentalist Perspective

- Things that might surprise you:
 - Environmentalists are not all “whackoos”
 - Environmental groups get a lot of support from conservative leaders in your community
- Things you should consider doing from an environmentalist perspective:
 - Include an environmentalist on your governing board or commission
 - Talk to environmental groups about your plans
 - Let them know the good things you are doing
 - Let them know the challenges
 - Let them know your budget needs

The Discharger Perspective



- Dischargers consider themselves to be the victim of most pretreatment programs
- Most dischargers are not evil
- Most dischargers are trying to comply with the rules, even if they don't like the rules.

The Discharger Perspective



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The Discharger Perspective

- The permit and the rules are confusing
- The person responsible for complying with the pretreatment rules at most companies:



- Has lots of other responsibilities
 - Is not an expert on the rules
 - May not be on the fast track to success
 - Relies on consultants
- And they regard you as the bad guy, or ...

The Discharger Perspective

- If they think of you as the Sherriff, it is more like Barney Fife.

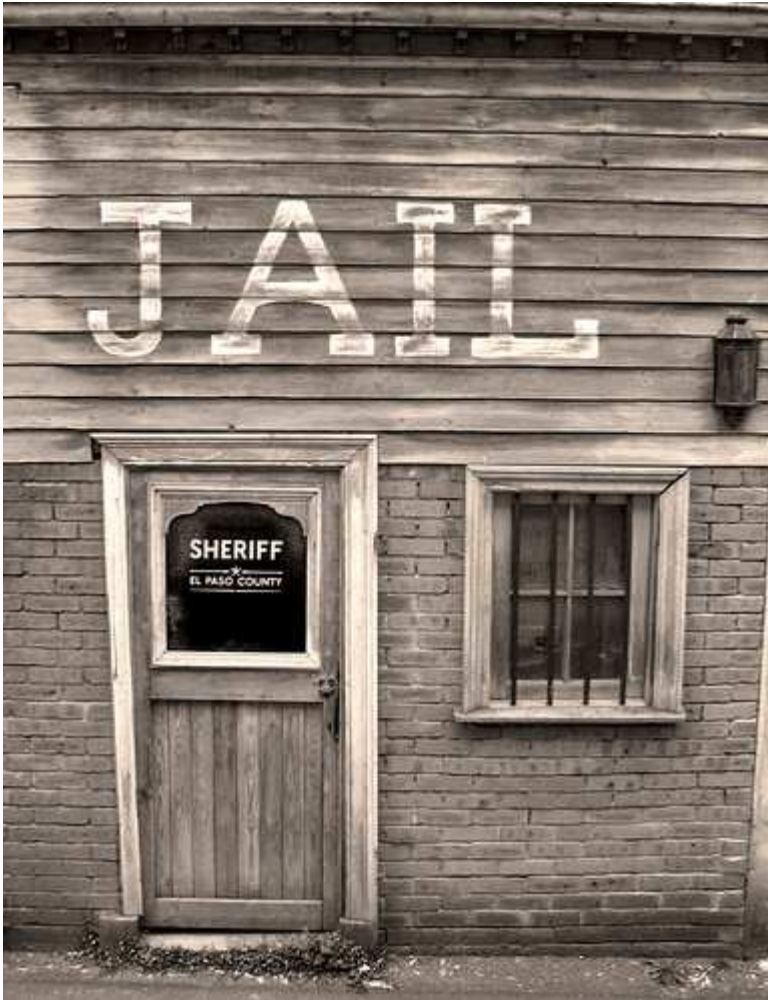


The Discharger Perspective

- What does the discharger want?
 - Level playing field
 - Acknowledgement of what the discharger has done to help the environment
 - Acknowledgement of role of pretreatment authority in any problem
 - Fairness
 - Minimize penalty
 - Future certainty
 - No interruption of operations or a speedy resumption of operations



The Discharger Perspective



- What does the discharger most fear
 - Disruption in operations (stopping ongoing discharges is often the most severe penalty)
 - Criminal charges
 - Large penalty
 - Increased operational costs

Common Problems

- Inadequate allocation of capacity to the dischargers that most need the capacity
- Difficulty of adjusting to changes in operations (e.g. batch specialty chemical operations)
- Reliance of cursory audits by local agency
- Poorly written permit and related communications
- Failure to read the permit
- Failure to read the ordinance
- Employees aren't doing what management thinks they are doing
- Uncertainty about plumbing connections
- Maintenance activities

Avoiding Problems

(by addressing the root causes of common problems)

- Help educate dischargers, especially small dischargers, through classes & newsletters
- Particularly in small systems, make sure that you understand the discharger's needs before you allocate pollutants (don't allocate all pollutants in proportion to flow)
- If you suspect a problem, first try to help the discharger fix the problem before spending a lot of time building a case.

Litigation

- Litigation Process
 - Issuance of NOV
 - Petition for Hearing (“Appeal”)
 - Informal and/or formal settlement efforts
 - Discovery
 - Hearing
 - Appeals



Litigation

- Defense weaknesses
 - Attorneys and experts are expensive
 - Laboratory work is expensive
 - Can't afford to be shut down or put on violators list
- Defense Strategy
 - Political pressure
 - News media
 - Litigation strategy
 - Chance to vent and quick settlement
 - Scorched earth (at least at the beginning)
- Settlement Negotiations

Litigation

- Defense Strategy
 - Political pressure
 - News media
 - Litigation strategy
 - Chance to vent and quick settlement
 - Procedural challenge
 - Substantive legal-based challenge
 - Substantive fact-based challenge
 - Fairness-based challenge
 - Scorched earth (at least at the beginning)

Litigation

- Settlement Negotiations
 - Listen and acknowledge the discharger's concerns, grievances and arguments
 - Think outside the penalty box - remember that you can often get the discharger to do things in a settlement that you cannot get them to do through a judgment or court order (SEPs).
 - Most dischargers are willing to spend more money to go beyond the minimum required to fix the problem than they are willing to pay as a penalty.
 - Pay attention to the economic arguments – if you insist on a big penalty, it may decrease the amount of money available for future compliance efforts.

Observations Over 25 Years

- Most violations are a result of not understanding the permit requirements and/or what is really happening in the shop
- Large companies generally tend to be more concerned about compliance
- Economic problems produce environmental problems

Conclusions

- Most pretreatment problems are the result of either:
 - Economic problems
 - Ignorance (by the permit holder or permit writer)
 - Laziness
- Violations are expensive for everybody
- Most violations can be avoided with better communications between the POTW and the discharger.

Please consider joining the Catawba Riverkeeper Foundation
by going to www.catawbariverkeeper.org
(every drop of support helps)



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