

# **Law & Order: SPU**

***(Special Pretreatment Unit)***



# Today's Speakers

- **David Snyder**  
Industrial Waste Section Head  
Los Angeles County Sanitation Districts, CA
- **Chandra R. Johannesson**  
Environmental Services Supervisor  
East Bay Municipal Utility District, CA
- **Joseph O. Johns**  
Assistant United States Attorney  
Chief, Environmental Crimes Sections  
United States Attorney's Office for the Central District of California, CA



SANITATION DISTRICTS OF LOS ANGELES COUNTY

# **“It's All Non-Haz, Baby” - Dumping of Shampoo Waste into Lancaster Sewers”**

by  
Dave Snyder

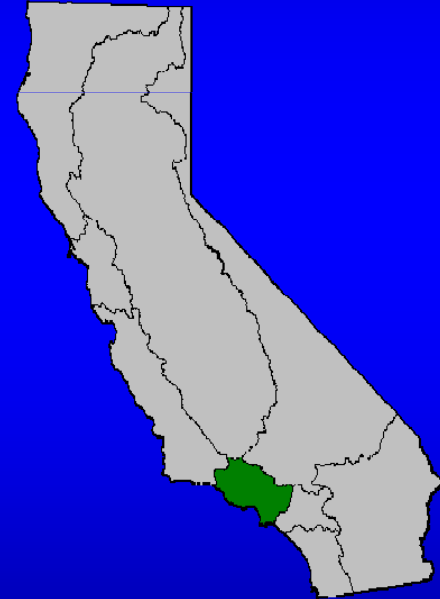
# Overview

- **Who are the Sanitation Districts?**
- **Pretreatment Program Background**
- **Enforcement Case Study**

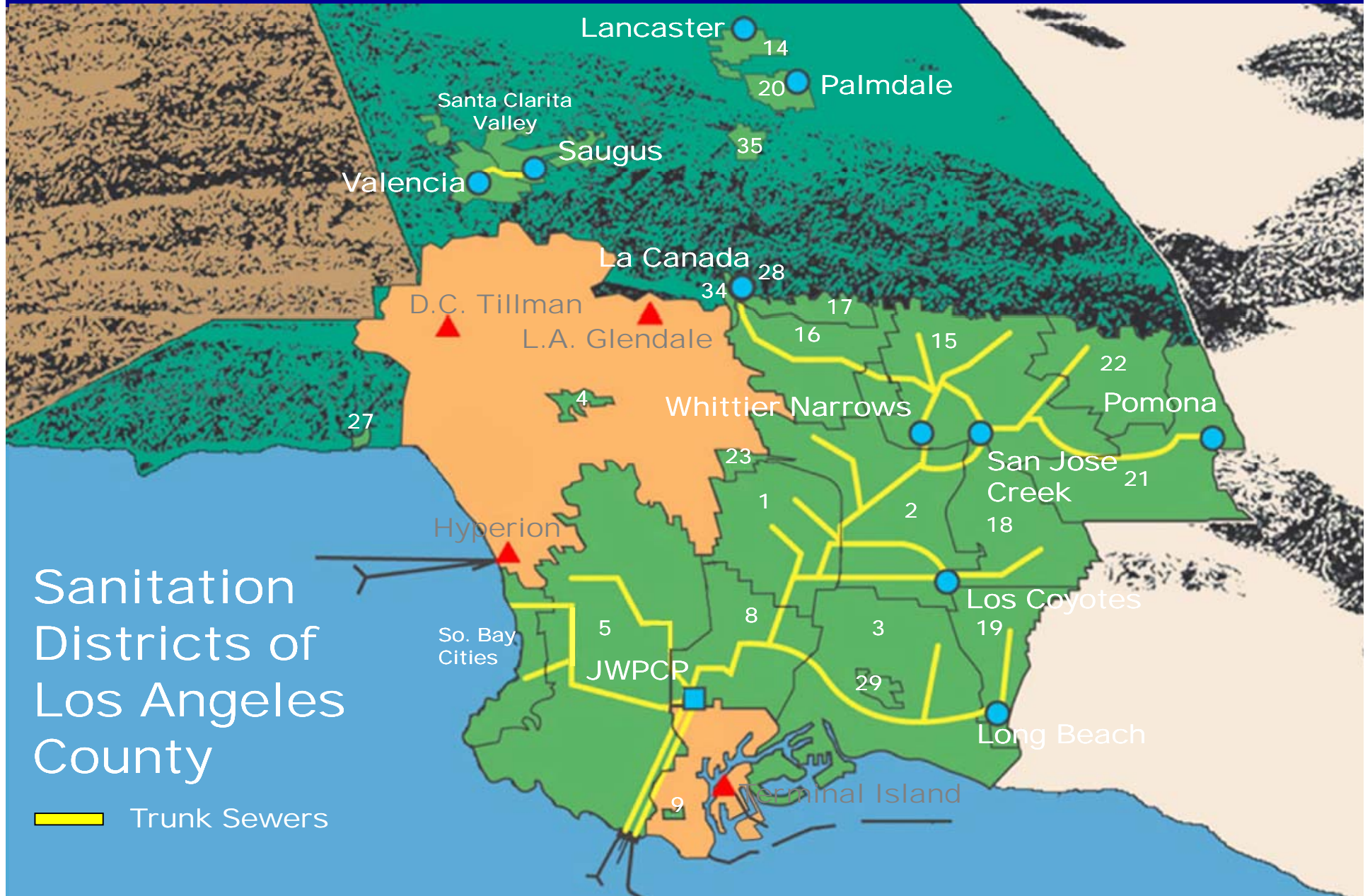


# Wastewater Treatment Services

- Serve 78 Cities, over 5 million people
- Treat 450 MGD
  - 1 ocean discharge plant
  - 10 water reclamation plants
- 165 MGD Available for Reuse
  - 50% actively reused



# Wastewater Treatment Facilities Map



# Sanitation Districts Pretreatment Program

- Wastewater Ordinance Approved April 1972
- 70 Employees, \$12 Million Annual Budget
- Objectives:
  - Protect Environment, Public Health, Employees and Infrastructure
  - Provide Recycled Water and Biosolids
  - Distribute Costs
  - Cost Effective Compliance





# Industrial Users

- 2600 active permits
- 950 Significant Industrial Users
- 650 Categorical Users



# Incident Investigation Methodology

- Method 1: Trace material upstream
  - Generally difficult to do
  - Material not in the sewer when investigators arrive
  - Logistics
- Method 2: Inspect Likely or Potential Sources
  - Most common type of investigation
  - Requires list of the potential sources

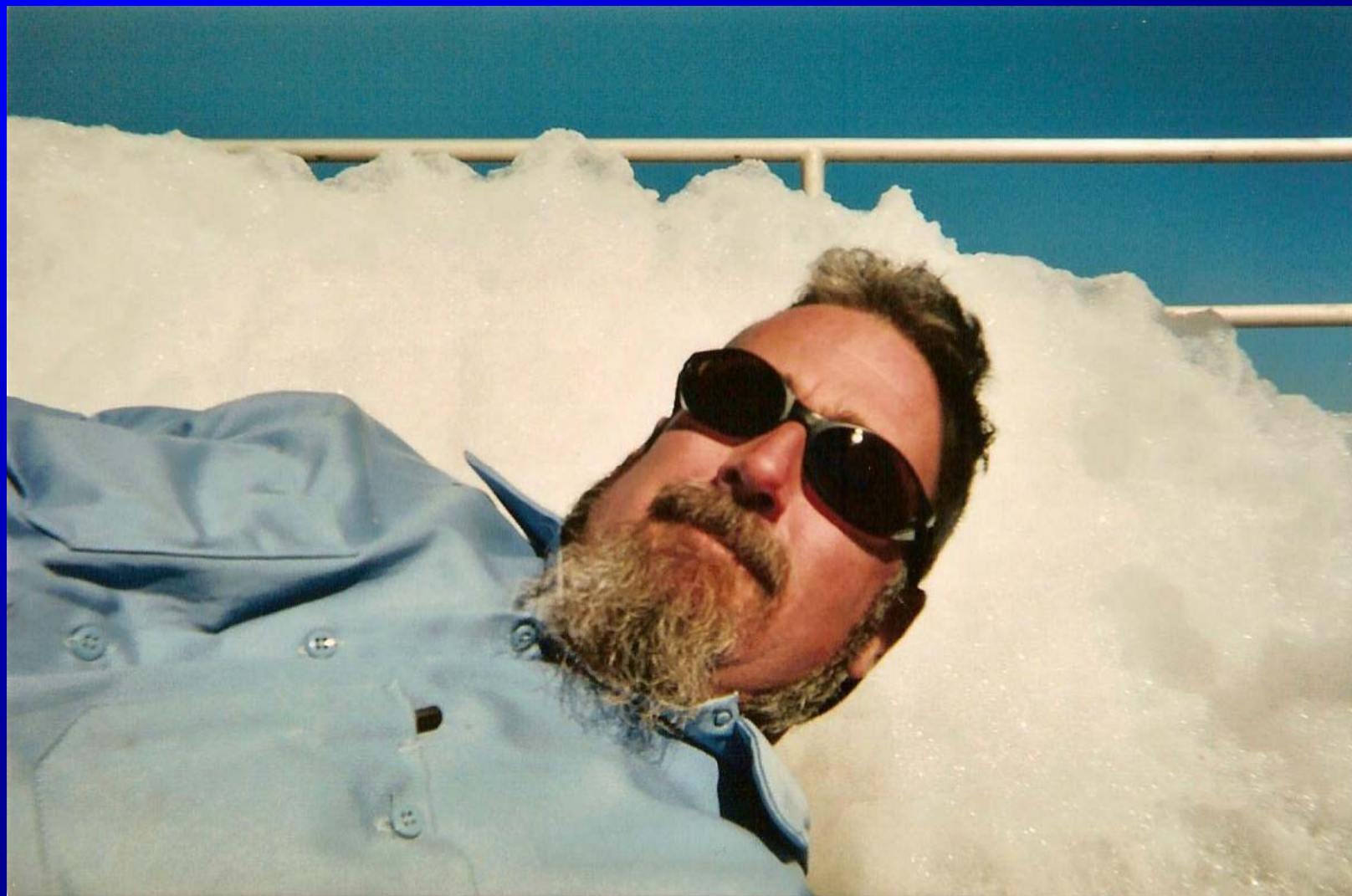
# Lancaster Plant Foam Incidents

- Semi-predictable – Every 1-2 weeks
- White and Billowy “Fruity Odor”
- Color Incidents with similar Odor













## Hair Conditioner in Plant Influent



# Initial Investigation

- Inspectors immediately identify 3 source suspects:
  - Large State Prison
  - Industrial Laundry
  - Lancaster Liquid Waste Station

# Prison Detergent Manufacturing





# Prison Bar Soap Manufacturing



# Mission Linen and Laundry



# Lancaster Liquid Waste Station



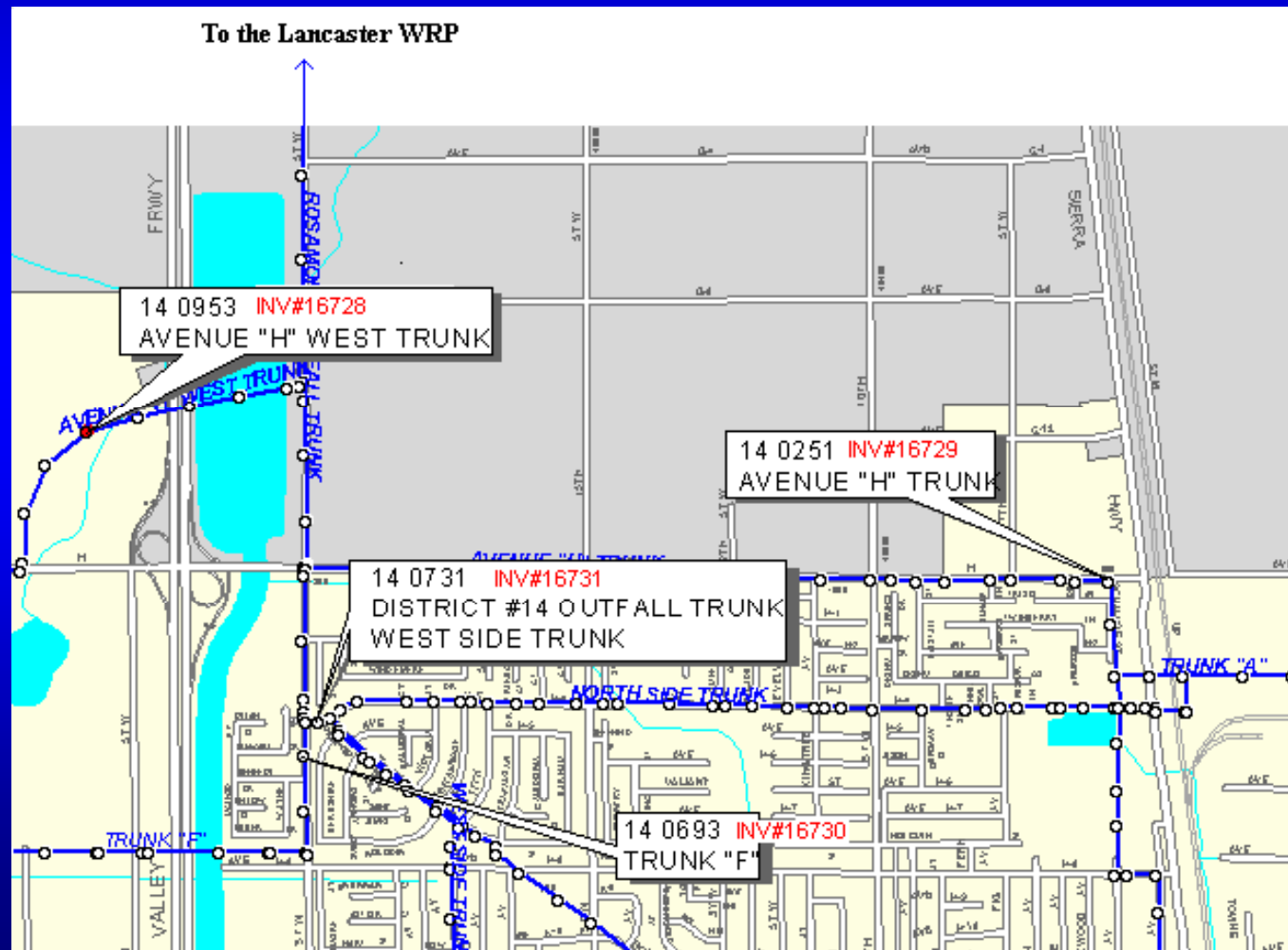
# Initial Investigation Results



- No hard evidence linking any of suspected sources
- Distance hindered investigation
- Unknown Industrial Source?
- Rogue waste hauler?



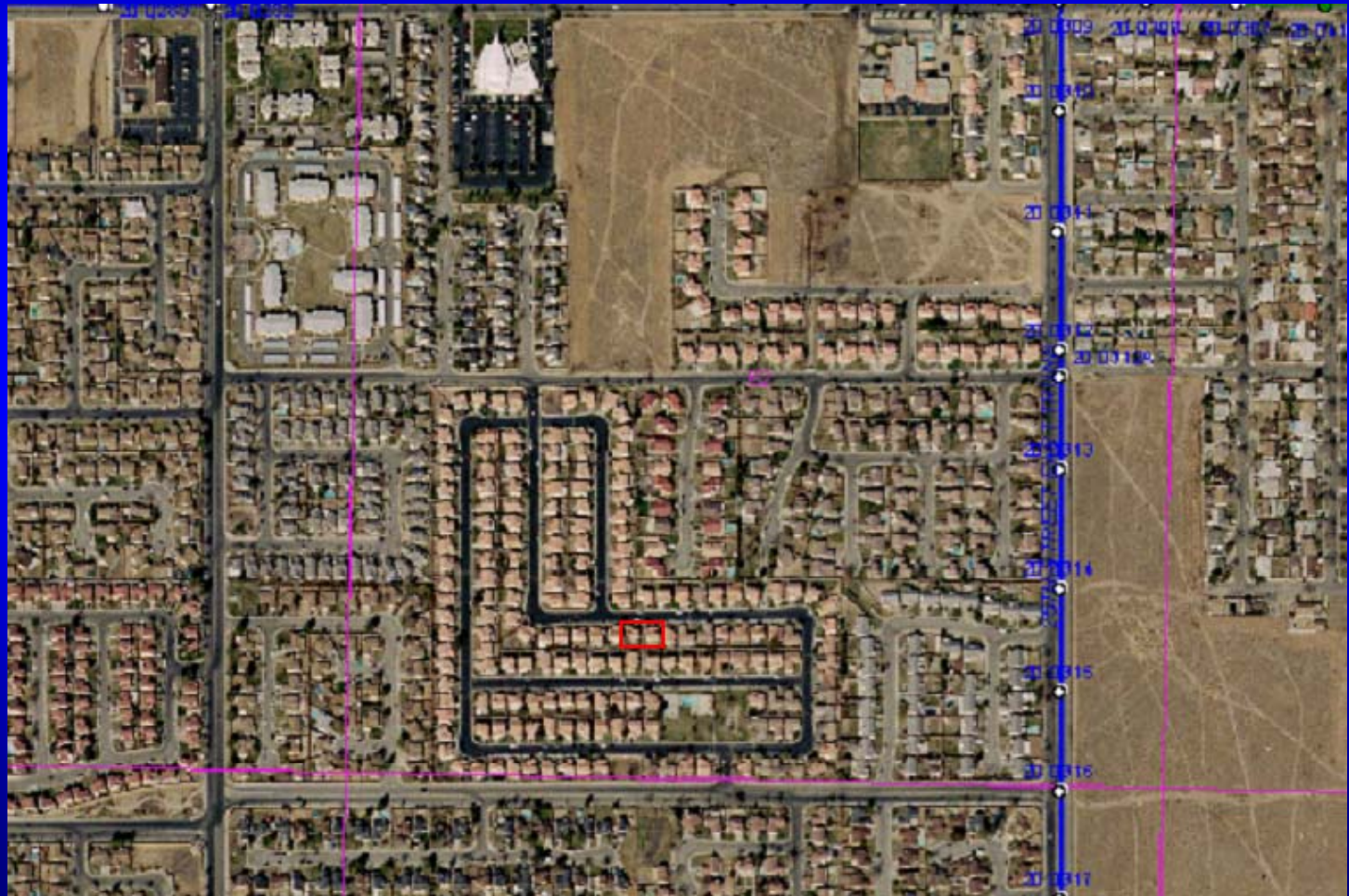
# Surveillance Sampling



## **Inspectors catch a break!**

- While at large shampoo and hair conditioner manufacturing operation in Valencia (about 60 miles away), Inspector notes that the waste manifests for company hauling wastewater has an address in Lancaster area
- Inspector calls in immediately
- S & T Pumping Co. - \$3K-\$5K per load.

# Districts' GIS System Aerial Reveals Residential Address



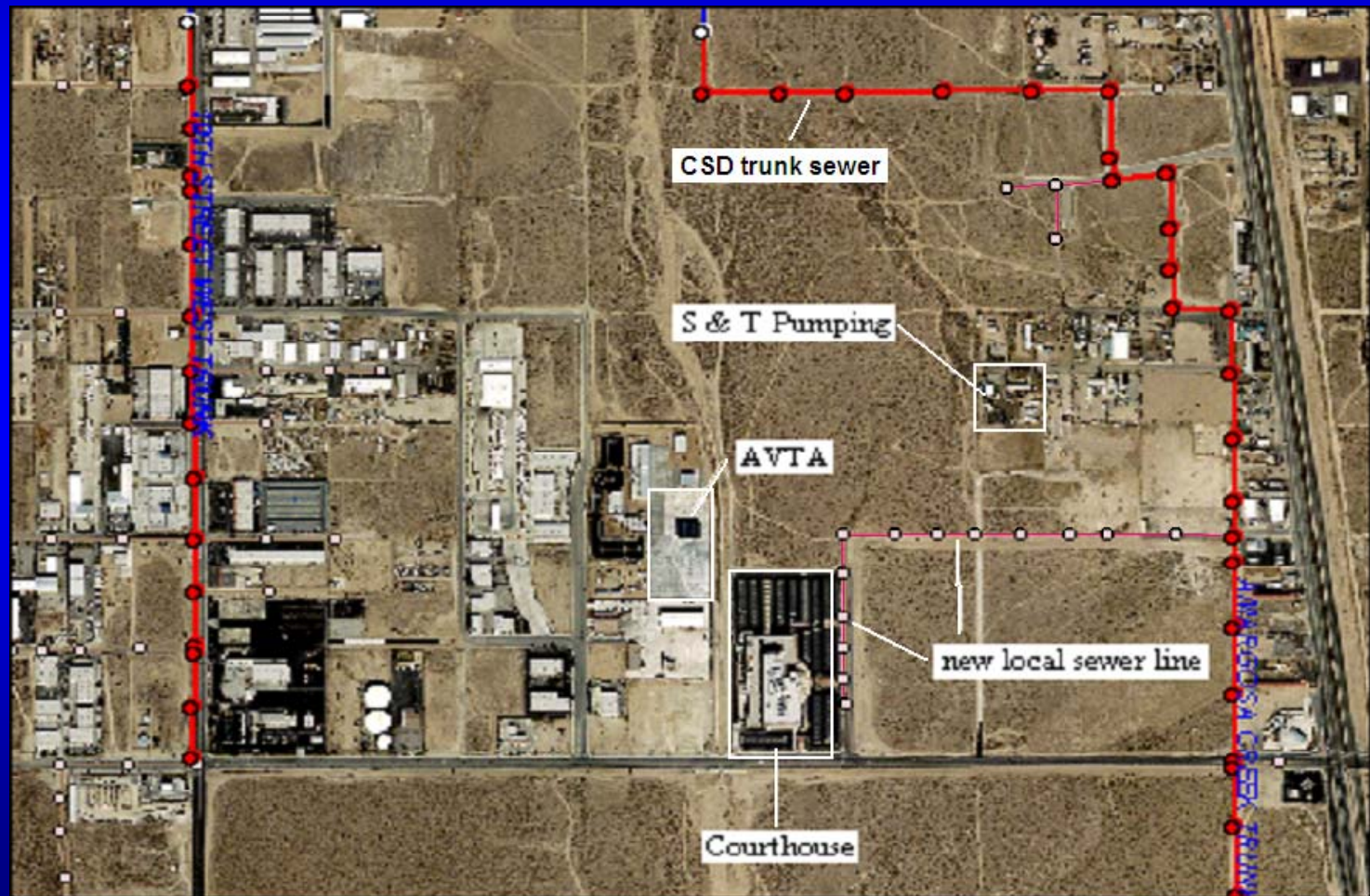


## Internet Reveals 2nd Site

- Smith & Thompson Pumping Co
- Owner - Sherwin Smith.



## Wider view shows nearby local sewer line and courthouse





# Bingo!



# Flex Hose Marks by MH



## Tire Tracks Next to MH





**Hey, let's get a sample of that!**



# Suntan lotion residual and bottle caps



# S & T Pumping Co Site Inspection

- In response to odor complaints
- A joint inspection by LACSD and the County Health
- Owner interviewed and the site is inspected
  - No sewer connection onsite is found.
  - Some residual liquid waste on ground.
  - Health Dept orders cleanup, but does not cite Smith.
- Owner admits to hauling shampoo waste to adjacent counties.

“If they don’t foam in my truck, they won’t foam your treatment plant”- S. Smith.

# State Takes Lead in Criminal Investigation

- Overnight stakeout follows tanker truck loaded with shampoo waste.
- Load is dumped into the sewer at self-serve car wash.
- State gets search warrant for S & T's site.



## **“It’s all non-haz, baby”**

- Owner was present during search
- Claimed the waste onsite was all non-hazardous and being hauled to several out of county sites and Arizona.
- Owner attempted to intimidate investigators during the search. Pointing at LACSD Inspector exclaimed, “I got your (rear)”.
- Business files, computers, and samples of illegally stored wastes were taken by Investigators



## Follow-up Investigation

- No waste loads from S & T were received at any of the facilities claimed by Owner.
- On 331 occasions S & T picked up waste loads but did not dispose of as claimed.
- On 273 occasions, signatures were forged on falsified "Certificates of Recycling"
- Waste generators were billed (\$3K-\$5K per load).

# Resolution

- Owner, Sherwin Smith, prosecuted and pled guilty to 11 charges, including illegal handling of hazardous wastes, fraud and grand theft.
- Smith was sentenced to 1 year in jail and fined \$81,000.
- Lancaster Plant foaming incidents ceased following the search warrant issuance.

## **A few last words**

- Difficult case to solve
- Liquid waste haulers have opportunity to transport and illegally dispose of wastes.
- Sanitation Agencies need to be vigilant.



# Questions?



# You Can't Make This Stuff Up!

## A Pretreatment Case for the History Books

Q D F Z D #Suhwuhdwp hqw#) #Sroxlwlrq#Suhyhqwlwlrq#Z runvkr s

May, 9, 2012

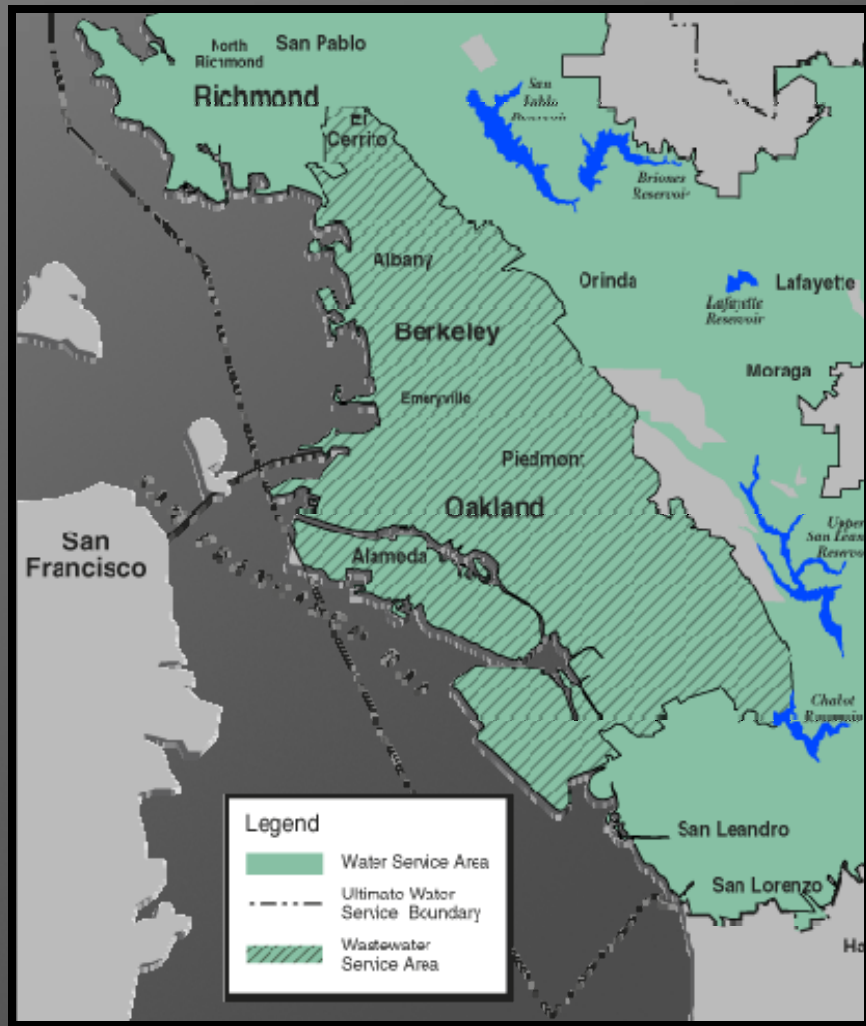
Fkdqgud#U1#Mrkdqqhvvrq  
East Bay Municipal Utility District  
Environmental Services Division

- Background
- Naughty Behavior Overview
- Enforcement Tools
- Current Status & What's Next

# Head | Pipe | Wastewater



- Located in Oakland, CA
- Owns and operates 30 miles of large diameter interceptor pipe, a main wastewater treatment plant, and three wet weather treatment facilities for 7 satellite collection system agencies
- Serves approximately 650,000 people in an 88-square-mile area along the east shore of San Francisco Bay
- Full secondary facility up to 168 MGD; current average daily flow is 67 MGD
- Celebrated 60 years of service in 2012





HEP XG #lgxvwldc#G lvfkdujh#) #  
Sroxwlrq#Suhyhqwlrq#Surjudp



- In 2011:
  - ~20,000 accounts classified as commercial, industrial, and institutional users
  - 9 SIUs categorical, 15 SIUs non-categorical, 11 non-SIUs, and 20 non-SIU zero discharge-categorical permits
  - Other permits managed include groundwater, special discharge, and estimation permits.
- Pollution Prevention Program Includes:
  - 1167 pollution prevention permits for businesses such as vehicle washing facilities, photo processing, and hospitals
  - Regional FOG Program
  - Regional Pharmaceutical Take Back Program
  - Mercury Management
  - Green Chemistry Initiatives
  - General Outreach/Education

- Electroplating company in Oakland, CA
- Highly industrial region
- In operation since 1930s
- Currently employs approximately 8-10 staff; at peak employed ~25
- Wastewater discharge is subject to federal categorical regulations (40 CFR 413.14) and local limits







03/01/2012



MVI\_715-4th\_old\_barrel\_line



MVI\_715-4th\_old\_barrel\_line

















# Q dx j kw | #Ehk dy lru #R y huy lhz #



## Y l r o d w l r q #K l v w r u |

- Cease and Desist Order issued in 1993 for repeated violations
- Between 1993 and 2000 there were **97 violations**
- Federal EPA investigation, felony conviction, civil penalties 2000-2002 **UD IG #4**,
  - Bypass of pretreatment system (**FOUND A SMOKING GUN!**)
- Discharge Violations continued after federal investigation
  - EBMUD enforcement included increased monitoring with associated monitoring and testing fees
- Monitoring 2004-Nov. 2008
  - Few violations detected from permitted discharge location





Q dx j kw| #Ehk dy lru#fr qw1,



Iqyhvwlj dwlrq #533 ; 0533 <

- District initiated monitoring in manholes in surrounding sewers in December 2008 due to:
  - Discharge violation
  - Water/sewer bill nonpayment and intermittent shutoffs
- December 2008 – March 2009 detected numerous zinc violations at unauthorized discharge locations
- April 2009 Multi-agency inspection +UDIG #&5 ,
  - Bypassing pretreatment system
  - Discharge to unauthorized discharge point





- September 2009 Order to the Discharger required
  - Engineer-prepared work plan and field investigation to identify
    - All connections to community sewer
    - Sewer connections within facility
  - EBMUD approval for plan to seal unauthorized connections
  - Seal all connections to sewer other than pretreatment system and sanitary
  - \$7,500 fine
- EBMUD increased monitoring from monthly to weekly
- Multiple Appeals → Settlement Agreement



Vhwwchp hqw#D juhhp hqw#P dufk#  
5343



- Settlement Agreement required:
  - Work plan be submitted to EBMUD to identify all connections to sewer
  - District approval of plan prior to corrective actions
  - Seal all unauthorized connections to sewer and all pipes/sumps that do not discharge to pretreatment system
  - Work to be performed by or under direction of licensed contractor
- After work is complete, discharger may institute third party monitoring to replace some District monitoring, to decrease costs
- Work to be completed within 6 months (by Sept. 8, 2010)
- Qr#z run#erp schwhg#Vhwwchp hqw#D juhhp hqw#v#yrlg
- EBMUD Administrative Order is now in effect

Q dx j kw | #Ehk dyl ru #F r qwl q x hv ý



- No work to address Sep 09 Administrative Order
- Numerous violations throughout 2011
- Operations continue uninterrupted
- Discharges from the authorized discharge location cease
- Evidence of continued illicit discharges



ý Wkhq#lw#J hww#G rz qulj kw#FUD ] \ \$



- Discharger claims they are a ZERO DISCHARGE facility! (provides no evidence)
- There have been no upgrades/modifications to the process equipment.
- Violations in surrounding sewers continue.
- Their water meters get shut off for non-payment.
- QR #DHJDO#VR XUFH#R I#Z DWHU#\ HW #WKH\ #  
FR QWIQXH#WR #R SHUDWH:

\ rx#J rw#W kdWB\$



- No water
- No discharge
- Continued operation
- Claims to be a ZD
- No upgrades to the ancient run down equipment
- Multiple continuous hits in the surrounding sewers
- Non-responsive to violation notices

F dq#| rx#j xhv#z kdW#kds shqhg#qh { wB

- EBMUD works with local District Attorney's office to support another multi-agency investigation
- Search warrant issued on March 1, 2012 +UD IG #6 ,
- Participants included EBMUD, DA, EPA, DTSC, CDFG, OSHA, and multiple law enforcement agencies
- Several samples collected to validate the ZD claim
- Identified illicit connection to water system
- Data still under review
- DA still evaluating the case for legal action

- Disconnected illicit water connection – yet they still operate
- Monitoring continues
- Violations continue
- Evaluation of options is underway
- Coordination with outside agencies will be needed





Wkdqnv#iru†  
 wk h#iuhh#  
 wk huds | ‡  
 vhwvlrq\$

Questions?

NACWA  
LAW & ORDER: SPU  
FIELD INSPECTION CRAFT 101  
AKA MAKING LAWYERS  
IRRELEVANT

Joseph O. Johns  
Assistant United States Attorney  
Chief, Environmental Crimes Section  
United States Attorneys Office  
Central District of California

What do you call 10,000 lawyers  
on the bottom of the ocean?

A good start

# When do the Lawyers get involved?

- ▣ Agency or County Counsel
  - Administrative or Civil complaint
- ▣ Local City or County Prosecutor
  - Criminal misdemeanor or felony violation of State Code or Wastewater Ordinance
- ▣ Federal Prosecutor
  - Criminal violations of the federal Clean Water Act
- ▣ Defense Counsel
  - See all of the above



# But what does it mean?

- ▣ Simply that your theory of the violation and the evidence supporting it will be stressed and tested
  - Whether by filing or charging consideration
  - Or by settlement negotiations and litigation

# Making Lawyers Irrelevant

- ▣ Have No Fear
- ▣ You are subject matter experts in your chosen field
- ▣ Very few lawyers share your depth of knowledge of the regulatory environment or the particular target company
- ▣ If you have been thorough, thoughtful, are well-prepared, and understand your regulations or ordinance
  - Dealing with the lawyers will be straightforward
- ▣ The only thing that will be exposed, is how well you have done your job

# Your Lawyer's Job

- ▣ To first ensure that you have done your job
  - If you have not, you will be asked to do many many things to prepare for potential litigation or prepare a case for actual filing
- ▣ To prove to THEIR lawyer that you have done your job well, and that there IS NO defense to the allegation



# Their Lawyer's Job

- ▣ To pick your case apart bit by bit
- ▣ To look for legal loopholes or mistakes in application of the regulations
- ▣ To demonstrate a job poorly done
  - Poor documentation
  - Gaps in documentation
  - Lack of proof or knowledge

# The Tip of the Investigatory Spear

- ▣ Understand your ordinance and regulations
- ▣ Conduct frequent Field Inspections
- ▣ Make and document observations
- ▣ Take samples and documents
- ▣ Conduct interviews
- ▣ Issue Notices of Violation
- ▣ Timely preparation of reports
- ▣ Preservation of notes and evidence

# Understanding the Regulations

- ▣ Simple common sense
- ▣ If you don't know the rules cold ....
  - You will never know what to look for
  - What violations you are seeing
  - How to prove the violations
  - Or how to explain the violations to your lawyer, their lawyer, or a jury and judge



# Field Inspections

- ▣ Be proactive
- ▣ Look for suspicious activity
  - Broken or inactive pre-treatment equipment with no corresponding shut down in business activity
  - Lack of records and documentation
  - Raised probes
  - Inability to explain processes
- ▣ Your insight may lead to further investigatory action, including search warrants

# Observations

- ▣ It seems obvious, but you have to take the time to figure out what you are looking at and supposed to be seeing
- ▣ When you see something odd or suspicious
  - Follow-up
  - Ask questions
  - Document it
- ▣ Examples: broken equipment and hose marks on the toilet

# Samples and Documentation

- ▣ Take several photographs to ensure you are capturing what you are trying to show
  - Try different angles and flash/no flash
- ▣ Take short video clips for overall perspective or to show how one thing is linked to the next
  - For example: the location of a hose and pump stored next to the bathroom
- ▣ Take samples
  - Presumptive field tests are not enough
- ▣ Take documents
  - For example: lack of hazardous waste manifests or probe read outs



# Interviews

- ▣ Interviews are the most essential part of an inspection
- ▣ Your first contact and interview may be the ONLY interview
- ▣ You must ask the Who/What/When/How

# Interview Questions

- ▣ Who is responsible for this?
- ▣ What is their job description?
- ▣ What did they do and why?
- ▣ Who ordered that to be done? When? Why?
- ▣ Who else knew about it?
- ▣ Who is their supervisor?
- ▣ Knowledge of flow, discharge, and connection?
- ▣ Knowledge of toxicity or discharge character?
- ▣ Does the supervisor know? How do you know that?

# Interviews and Interpreters

- ▣ If your inspection location is known to be operated by individuals that don't speak your language .... Bring an interpreter
- ▣ If not, use another fluent employee
- ▣ Make sure you identify them
- ▣ Make sure that the person being interviewed acknowledges that he/she understands the interpretation
- ▣ Just tape the whole dang thing on your iPhone
  - Just tell them that is what you are doing



# Notices of Violation

- ▣ Document your violations
- ▣ Issue a Notice of Violation
- ▣ Notice of minor violations NOW ....
  - Might prevent serious violations later
  - Will help prove a more difficult case later
- ▣ Think CRIMINAL RAP SHEET

# Timely Preparation of Reports

- ▣ Nothing good happens after midnight
- ▣ Nothing good happens when you wait weeks or months to prepare your reports
- ▣ You are asking for a seriously bad experience in a deposition or on the witness stand
- ▣ Memories DO NOT improve with the passage of time

# Preservation of Notes and Evidence

- ▣ Burn your digital photographs onto a CD
- ▣ Keep your notes unless your agency has other rules
- ▣ Have samples tested within time limits
- ▣ Preserve samples for further testing or defense split sample requests
- ▣ Make sure you maintain your documentation until your lawyer says the case can be closed out

# A Word on Mens Rea

- ▣ Strict Liability
- ▣ Negligence
- ▣ Knowing
- ▣ Willful



# Corporate Liability

- ▣ Theory of Respondeat Superior
- ▣ A corporation is responsible for the actions of an employee acting within the scope of his or her employment ....
- ▣ And motivated, at least in part, by an intent to benefit the corporation

# Liability of Managers

- ▣ Actual involvement in bad conduct with evidence of required Mens Rea .....
- ▣ Aiding and abetting, facilitating, or causing an action to take place

# The Charging Decision

- ▣ Quantity discharged
- ▣ Concentration of pollutant
- ▣ Harm to human health
- ▣ Harm to environment
- ▣ Harm to infrastructure
- ▣ Mens Rea or Intent

# Questions?





# Continue the Discussion on



**Log-on Today! [www.nacwaengage.org](http://www.nacwaengage.org)**

