

Enforcement Under Federal and State Clean Air Laws



Tom Roan

Customary Disclaimer

- ▣ This presentation is mine. My views do not necessarily represent those of the Colorado Attorney General.

“Cooperative Federalism” model

- ▣ States historically regulate pollution
 - Colorado’s air quality statutes have evolved since 1963 to today’s APPCA
- ▣ Federal statutes evolved to today’s Clean Air Act
- ▣ Need for uniformity, strong oversight
- ▣ State Primacy
- ▣ Federal Delegation
- ▣ State Implementation Plans

Federal Air Quality Regulation

- ▣ Environmental Protection Agency
- ▣ Clean Air Act, 42 USCS 7401, et seq.
- ▣ EPA Regs: 40 CFR 50-99
 - NAAQS
 - HAP Standards
 - Source-specific Standards

State Air Quality Regulation

- ▣ Colorado Department of Public Health and Environment
 - ▣ Air Pollution Control Division
 - ▣ Air Quality Control Commission
- ▣ Air Pollution Prevention and Control Act, Section 25-7-101, et seq., Colorado Revised Statutes
- ▣ 5 Colorado Code of Regulations, 1001
- ▣ Delegated Program
- ▣ State Implementation Plan

Tribal Regulation

- ▣ Under CAA, Tribes are treated as States
- ▣ Southern Ute Reservation- 681,000 acres in LaPlata, Archuleta Counties (checkerboard of ownership)
- ▣ Ute Mountain Ute Reservation located in three states, including Colorado (Montezuma County)
 - EPA has primacy within the exterior reservation boundaries

Southern Ute Tribe

- ▣ First and only tribe to accept delegation of Title V permit program
- ▣ 2016 Clean Air Excellence Award for Regulatory and Policy Innovation
- ▣ Tribe administers, enforces program
- ▣ Colorado air regulators consult
- ▣ Joint environmental commission
- ▣ Colorado agencies advise

Regulatory Tools

- ▣ Permitting
- ▣ Inspections
- ▣ Monitoring
- ▣ Record-keeping
- ▣ Reporting

Enforcement: Who's in charge?

- ▣ Colorado!
- ▣ EPA is responsible for oversight
- ▣ EPA relies on the State
- ▣ EPA overfile powers

2014 Colorado Enforcement Statistics

- ▣ Apx 16,000 regulated sources in CO
- ▣ 210 Major Sources
- ▣ 1300 “Synthetic Minor” Sources
- ▣ 14,000+ “True Minor” Sources
- ▣ Division conducts ~1,000 full compliance inspections per year
- ▣ 155 Enforcement actions closed
- ▣ \$1 million in Penalties

WHERE DO WE START?

Inspections









We have proof....

Now what?

Administrative Enforcement

- ▣ Good for compliant Operators
- ▣ Notice of Violation (or “Compliance Advisory”)
- ▣ Conference
 - Charges summary
 - Defendant’s side of the story
- ▣ Negotiations
- ▣ Settle?
 - Compliance Order on Consent



COLORADO

Department of Public Health & Environment

AIR POLLUTION CONTROL DIVISION

COMPLIANCE ADVISORY

CASE NO. 2016-018

AIRS NO. 037-0075

INSPECTION DATE: April 2, 2015, and
July 21, 2015

U.S. CERTIFIED MAIL NO. 70140150000064949150

MAILING DATE: February 19, 2016

SOURCE CONTACT: Kate Ferris

IN THE MATTER OF VAIL SUMMIT RESORTS, INC. D/B/A Beaver Creek Ski Resort, Inc.

This Compliance Advisory provides formal notice, pursuant to § 25-7-115(2), C.R.S., of alleged violations or noncompliance discovered during the Air Pollution Control Division's ("Division") inspection and review of records related to Vail's Facility identified below. The Division is commencing this action because it has cause to believe that the compliance issues identified below may constitute violations of the Colorado Air Pollution Prevention and Control Act ("the Act") and its implementing regulations.

Please be aware that you are responsible for complying with applicable State air pollution requirements and that there are substantial penalties for failing to do so. Pursuant to the enforcement authority provided the Division by § 25-7-115, C.R.S., any person who violates the Act, its implementing regulations or any permit issued thereunder may be issued an order for compliance that can include permit revocation and assessment of penalties of up to \$15,000 per day of such violation in accordance with § 25-7-122, C.R.S. The issuance of this Compliance Advisory does not in any way limit or preclude the Division from pursuing additional enforcement options concerning this inspection/review. Also, this Compliance Advisory does not constitute a bar to enforcement action for violations not specifically addressed in this Compliance Advisory.



COLORADO

Department of Public Health & Environment



AIR POLLUTION CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

CASE NO. 2014-124

AIRS NO. 123-0057

IN THE MATTER OF KERR-MCGEE GATHERING, LLC

The Colorado Department of Public Health and Environment ("CDPHE"), through the Air Pollution Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under § 25-7-115(3)(b), C.R.S. of the Colorado Air Pollution and Prevention and Control Act, §§ 25-7-101 to 1309, C.R.S. ("the Act"), and its implementing regulations, 5 C.C.R. § 1601, *et seq.* ("the Regulations") with the express consent of Kerr McGee Gathering, LLC ("Kerr-McGee"). The Division and Kerr-McGee may be referred to collectively as "the Parties."

I. STATEMENT OF PURPOSE

The mutual objectives of the Parties in entering into this Consent Order are:

1. To establish compliance requirements and criteria for the continued operation of Kerr-McGee's Lancaster Gas Plant located at 116116 County Road 22, Fort Lupton, Weld County, Colorado ("Facility"); and
2. To resolve the violations of the Act cited herein and in the Compliance Advisory issued to Kerr-McGee by the Division on December 19, 2014.

II. DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with § 25-7-115(3), C.R.S., the Division has made the following determinations regarding violations of regulatory, statutory, and/or permit requirements associated with the Facility.

3. At all times relevant to the violations cited herein, Kerr-McGee was a Limited Liability Corporation in good standing and registered to conduct business in the State of

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
COLORADO AIR QUALITY CONTROL COMMISSION
STATE OF COLORADO

CASE NO. 2015-066 and CASE NO. 2015-067

FINAL ORDER OF THE AIR QUALITY CONTROL COMMISSION

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
AIR POLLUTION CONTROL DIVISION,

Petitioner,

v.

STERLING ETHANOL, LLC and YUMA ETHANOL, LLC,

Respondents.

This matter is before the Colorado Air Quality Control Commission on appeals by Sterling Ethanol, LLC and Yuma Ethanol, LLC to compliance orders issued by the Air Pollution Control Division. The Commission held an evidentiary hearing on April 21 & 22, 2016. Sterling and Yuma were represented by Paul Seby and Hayley Easton of Greenberg Traurig, LLP. The Division was represented by Assistant Attorneys General Robyn Wille and Laura Mehew. After considering the evidence presented, the Commission now enters this FINAL ORDER OF THE AIR QUALITY CONTROL COMMISSION as follows:

FINDINGS OF EVIDENTIARY FACT

1. Sterling and Yuma each operate ethanol manufacturing plants. Sterling's plant is subject to CDPHE Construction Permit 04LO1295, Modification #3, dated November 14, 2011. (Ex. 1.¹) Yuma's plant is subject to CDPHE Construction Permit 06YU0214, Modification #1, dated June 20, 2008. (Ex. 2.)

¹ The Parties presented the following exhibit binders at hearing: (1) Joint Stipulated Exhibits Volume 1 of 3, containing Exhibits 1-79, with the exception of several non-stipulated exhibits; (2) Joint Stipulated Exhibits Volume 2 of 3, containing Exhibits A-WWW; (3) Joint Stipulated Exhibits Volume 3 of 3, containing Deposition Exhibits 5-20; (4) Sterling Ethanol, LLC and Yuma Ethanol, LLC's Non-Stipulated Exhibits, containing several loose exhibits not in the first binder and Exhibits 80-88. Finally, the Division presented several non-bound Exhibits, including Exhibits XXX-BBBB.

Enforcement Remedies

- ▣ Corrective Action
 - THIS is our Priority
 - Install pollution controls
 - Install monitors
 - Record keeping/reporting
- ▣ Penalties
- ▣ Supplemental Environmental Projects



Civil Enforcement

- ▣ Best strategy for....
 - Noncompliant operators
 - Extraordinary Violations

Why? CONTEMPT

CIVIL ENFORCEMENT

- ▣ Complaint
 - Motion for Preliminary Injunction
 - ▣ Corrective action to maintain the status quo
- ▣ Answer
- ▣ Injunction Hearing
- ▣ Injunction
- ▣ Discovery
- ▣ Negotiations
- ▣ Settlement or Trial

DISTRICT COURT, MOFFAT COUNTY, COLORADO 221 West Victory Way, Suite 300 Craig, CO 81625 (970)824-8254	<div style="text-align: center;">   </div> <div style="text-align: center; margin-top: 100px;"> COURT USE ONLY </div>
COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, DIVISION ADMINISTRATION, Plaintiff v. CHARLES EDWARD COUNTS AND TARANGO, INC., Defendants.	
	Case Number: 12 CV 59
ORDER	

THIS MATTER comes before the Court upon Plaintiff Colorado Department of Public Health, Division of Administration's ("Plaintiff" or "CDPHE") Motion for Summary Judgment filed November 14, 2012. Defendant Charles Edward Counts ("Defendant Counts") and Tarango, Inc. ("Defendant Tarango") have not responded. Upon being fully apprised of the facts and law, the Court enters the following order.

FACTS

On December 19, 2009, the Air Pollution Control Division of the CDPHE (the "Division") issued a "Compliance Advisory" to Four Mile Creek Recycling, an oil and gas produced water disposal facility, for violations of title 25, article 7 of the Colorado Air Pollution Prevention and Control Act (the "Act"). The Compliance Advisory noted two violations: (1) failure to obtain and file an Air Pollutant Emission Notice prior to commencing operations; and

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:15-cv-00841

UNITED STATES OF AMERICA, and
STATE OF COLORADO,

Plaintiffs,

v.

NOBLE ENERGY, INC.,

Defendant.

COMPLAINT

Plaintiffs, the United States of America, by authority of the Attorney General of the United States and acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Colorado, on behalf of the Colorado Department of Public Health and Environment ("CDPHE"), file this Complaint and allege as follows:

I. STATEMENT OF THE CASE

1. This is a civil action against Noble Energy, Inc. ("Noble" or "Defendant") pursuant to Section 113(b) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(b), and Sections 121 and 122 of the Colorado Air Pollution Prevention and Control Act (the "Colorado Act"), C.R.S. §§ 25-7-121 and 122.

2. Plaintiffs seek injunctive relief and civil penalties for violations of the Act, the Colorado Act, and Colorado's federally-approved State Implementation Plan ("SIP") relating to

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:15-cv-00841

United States of America, and
the State of Colorado,

Plaintiffs

v.

Noble Energy, Inc.

Defendant.

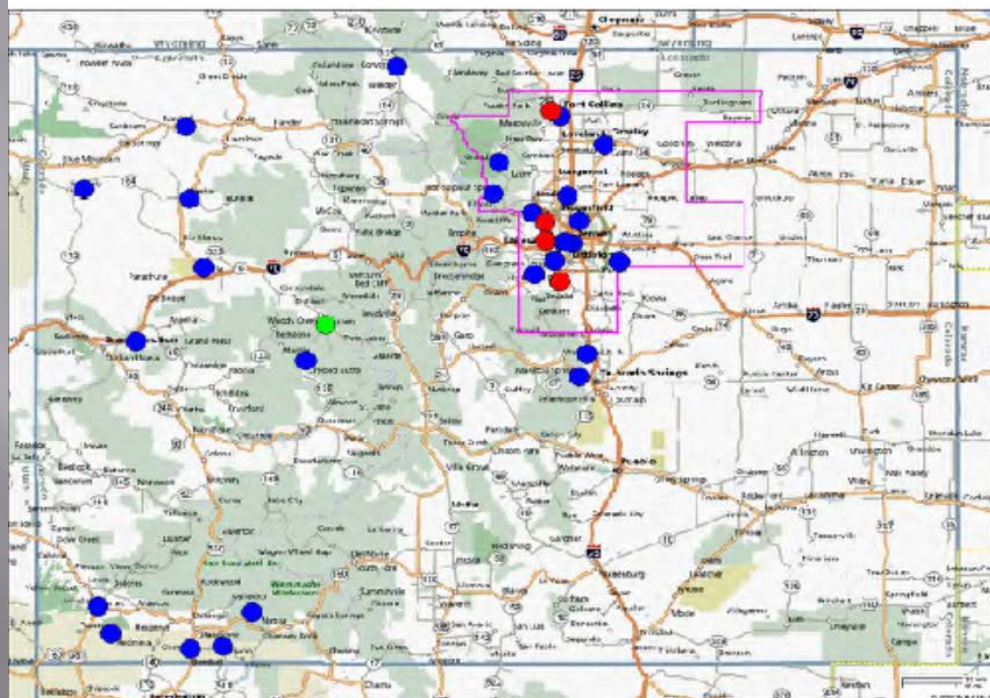
CONSENT DECREE

Criminal Enforcement

- ▣ Health Department Referral
- ▣ Office of the Attorney General, Special Prosecutions
- ▣ US Attorney
 - Special appointments
- ▣ Parallel Proceedings
- ▣ Prosecutors may not use civil investigators to circumvent 4th Amendment

Does Enforcement Actually Improve Air Quality? Yes!

75 ppb Standard



Colorado Ozone Sites Comparison to Federal Ozone Standard (75 ppb)

2013 - 2015 (thru 9/30)

Ozone Standard:
3-year average of 4th maximum
8-hour values must be ≤ 75 ppb

- Above level of standard
(3+ years of data available)
(Based on 3-yr. avg. of 4th max. for 2013 - 2015)
- Above level of standard
(<3 years of data available)
(Based on avg. of 4th max. for years available)
- Below level of standard
(3+ years of data available)
(Based on 3-yr. avg. of 4th max. for 2013 - 2015)
- Below level of standard
(<3 years of data available)
(Based on avg. of 4th max. for years available)

— Non-attainment area



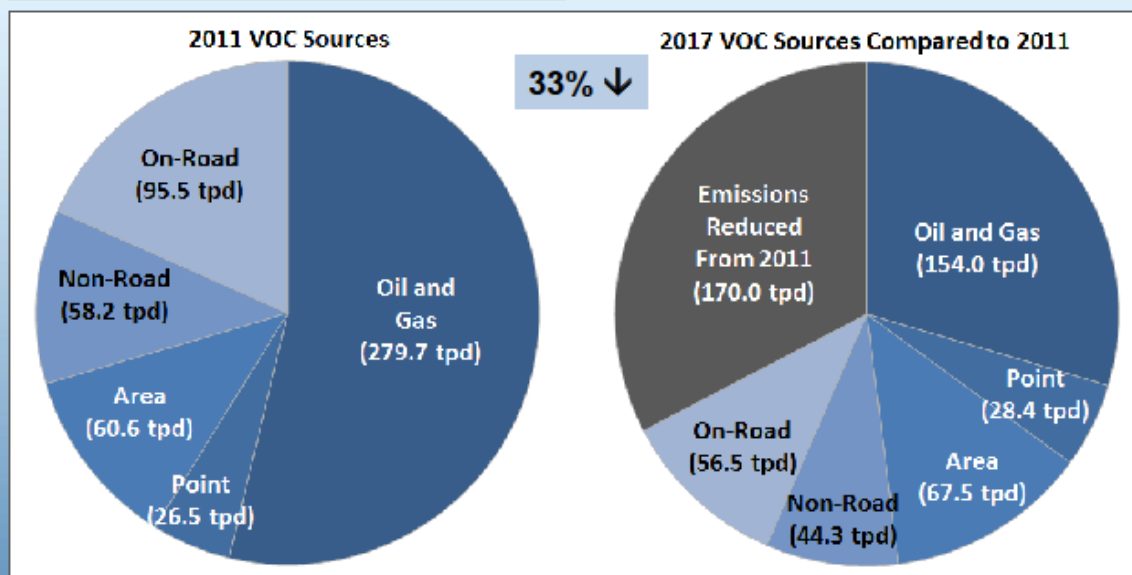
COLORADO
Air Pollution Control Division
Department of Public Health & Environment

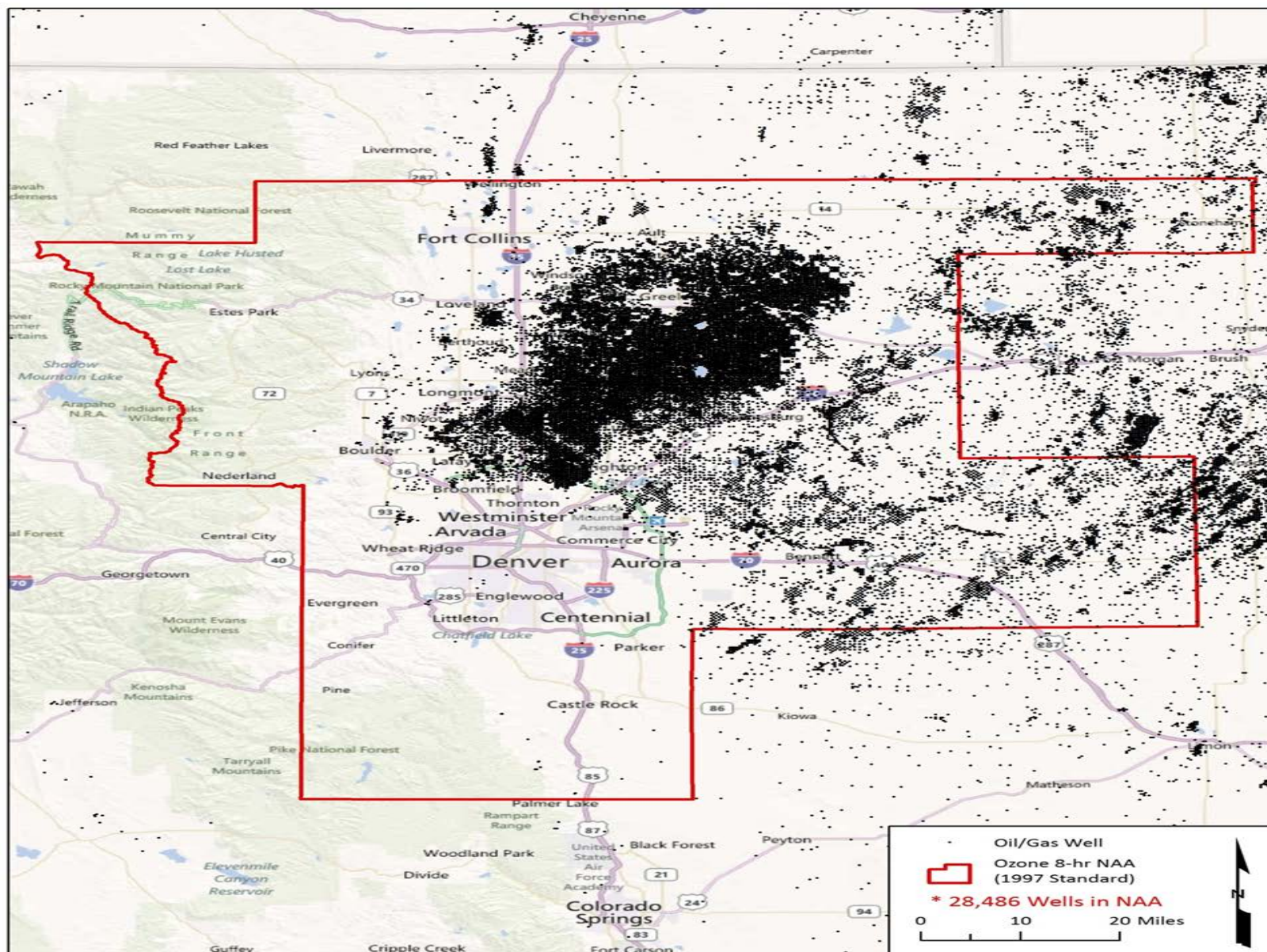
Oil and Gas: BIG source of VOC's

2011 and 2017 VOC Emissions Inventory All Anthropogenic Sources

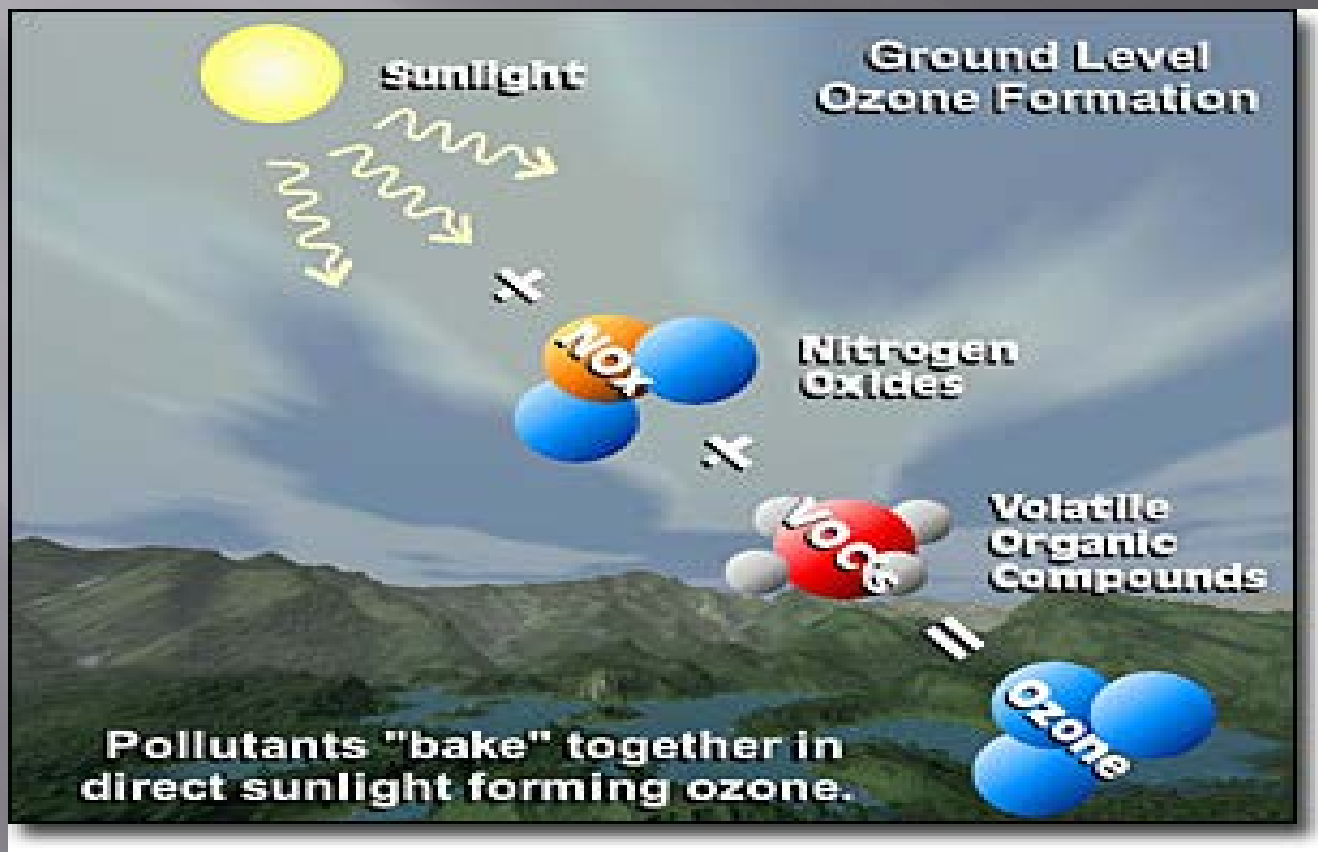
VOC (tpd)		
2011	2017	Δ
520.6	350.6	-170.0

NO _x (tpd)		
2011	2017	Δ
325.8	236.0	-89.8





VOC+Nox+Sun= O₃



Enforceable Federal Court Consent Decree

- ▣ 3,400 Batteries
- ▣ \$60 Million in Corrective Action
- ▣ 2400 TPY in VOC reductions
- ▣ \$8.95 Million in penalties
- ▣ \$4.5 Million in Mitigation projects

How does this help?

- ▣ Ozone
 - Oil and Gas Settlement: 2400 (or a lot more) TPY VOC Reduction
 - Refinery Settlement:
 - ▣ 3200 TPY Nox
 - ▣ 100 TPY VOCs
- ▣ Greenhouse Gas
 - Methane control

Enforcement War Stories

- ▣ 3 Types of Defendants
 - I made a mistake (small or big)
 - I can't comply
 - I won't comply unless forced

- ▣ Examples
 - Tienda
 - Enterprise/Petroleum Development Corp/Marathon
 - Oxy Petroleum
 - Noble

Questions?

- ▣ tom.roan@coag.gov
- ▣ 720-508-6268