

# Practical Tips & Trends in RCRA Hazardous Waste Management & Enforcement

Timothy W. Ling, P.E. & Alexander S. Busby  
Plaskolite, LLC.

David M. Edelstein  
Vorys, Sater, Seymour and Pease LLP.

# PLASKOLITE, LLC.

- Plastic pellets, sheets, profiles, molded products
- 12 NA & 4 EMEA sites

<https://youtu.be/2FKlq9pmSCY>



VORYS

★ PLASKOLITE

# Topics

---

- **Increased RCRA enforcement visits**
- **Surviving RCRA Compliance Evaluation Inspection (CEI) & enforcement**
- **Trends**



**VORYS**

★ **PLASKOLITE**

# What Else Has Changed? 2019



- Increased use of guidance documents in affirmatively decided cases
- **2018** Assoc. AG memos
- Cooperative Federalism
  - Jan. 2018 (SFPA)
  - Oct. 2018 (SFPA)
  - (Bodine) & (Wheeler)



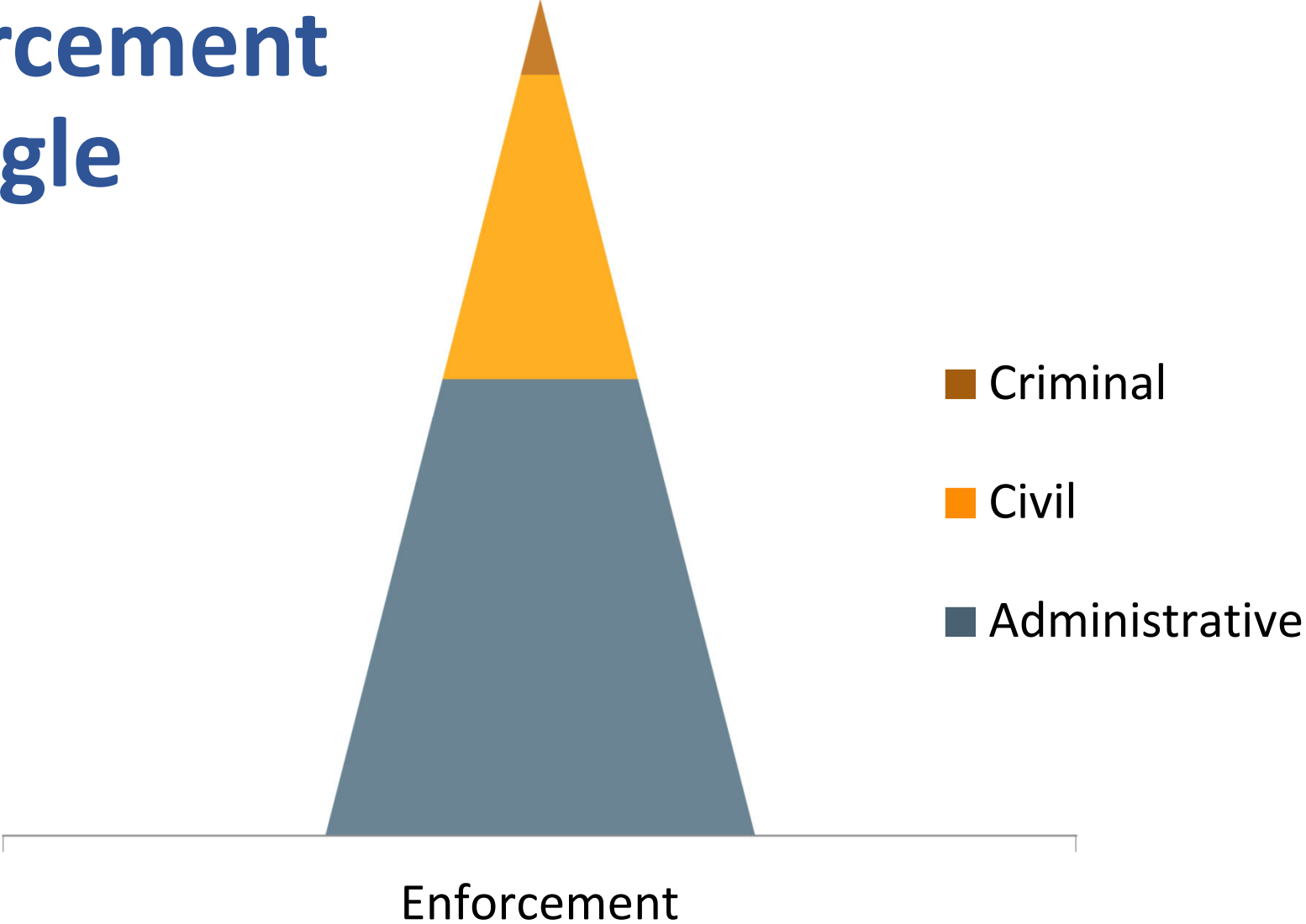
# Civil Enforcement Process

- Targeting
- Inspection (or information request)
- Enforcement (administrative, civil)
- Resolution (penalty, injunctive relief)

**VORYS**★

**PLASKOLITE**

# Enforcement Triangle







# How Does EPA Target Facilities?

---

- Annual planning of a list of facilities
- Time since last inspection (schedule)
- Compliance history
- Orders, Consent Decrees, open NOVs



## How Does EPA Target Facilities (cont.)?

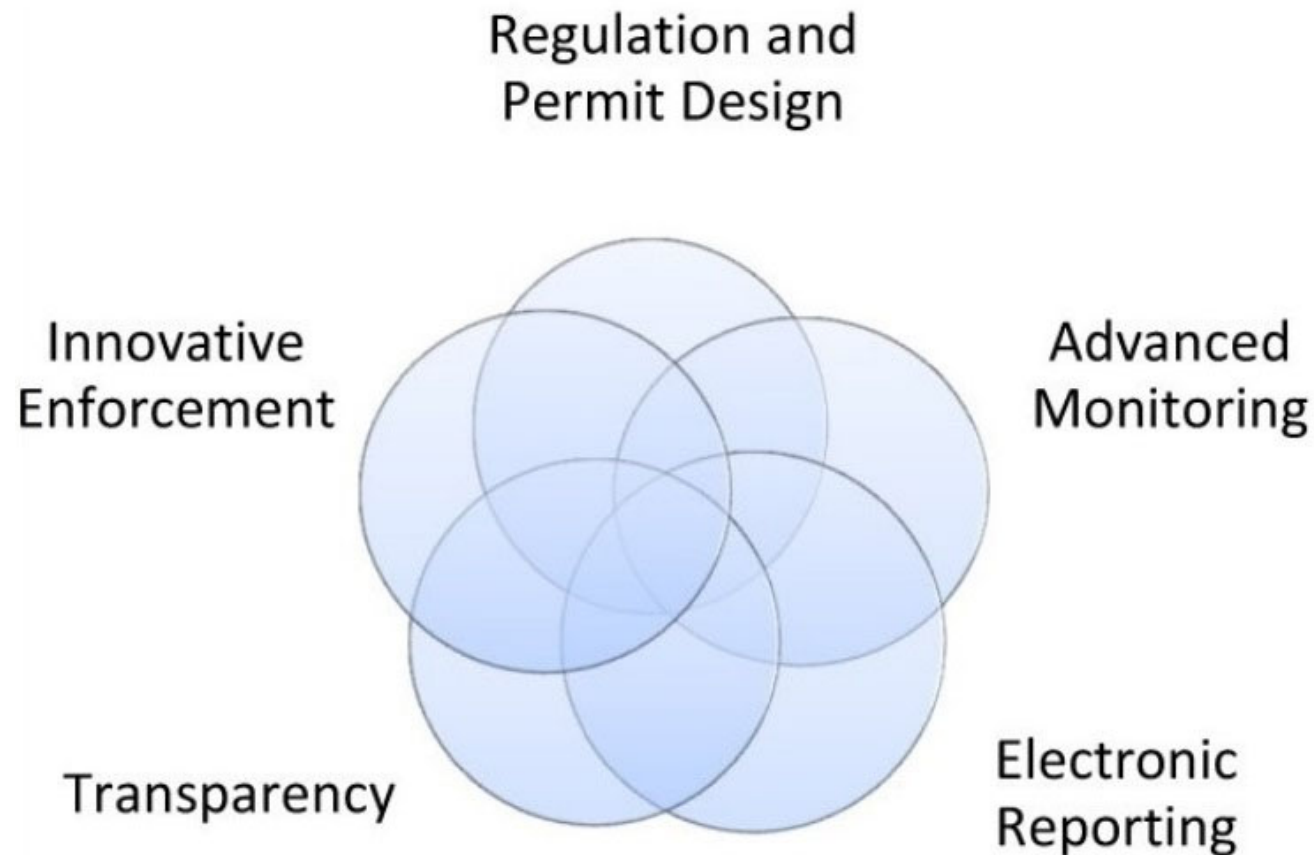
---

- **Pollution cross sections**
  - *NESHAPS*
  - *RCRA waste impoundments*
- **“Next Gen” enforcement strategies**



# “Next Gen” Compliance/Enforcement

➤ <https://www.epa.gov/compliance/next-generation-compliance>



# Civil Inspectors' General Authority

---

- Administrative authority to inspect
- Normal business hours, at main gate
- Permission from site authority
- Present credentials & explain purpose



# Civil Inspectors' General Authority

---

- Never sign liability waivers, NDAs
- Advance notice is not required
- Fear, trickery or threat not to be used
- Civil inspector's "five senses"



VORYS★

PLASKOLITE

# Exit Interviews



- Inspectors should conduct exit interviews & you can request one
- Take copious notes & request copies of documentation (**ALL “discoverable”**)
- Your observations & notes essential to Legal in any Agency follow-up

# RCRA CEI Case Study

---

- **Unannounced USEPA/State CEI of TN and MS sites**
- **Walkthrough**
- **Requested documents**



**VORYS**

**PLASKOLITE** 

# RCRA-Compliant Container (SAA)

- Partially full drum
- Closed drum
- “Hazardous Waste”
- Descriptive label
- DOT label



## HAZARDOUS WASTE METHYL METHACRYLATE

**DANGER**



### Hazard Statements

H225: Highly flammable liquid and vapor.  
 H315: Causes skin irritation.  
 H317: May cause an allergic skin reaction.  
 H335: May cause respiratory irritation.  
 H402: Harmful to aquatic life.

**PLASKOLITE**

### Precautionary Statements

P210: Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. No smoking. P261: Avoid breathing vapors. P280: Wear protective gloves/protective clothing/eye protection/face protection. P302+P352: IF ON SKIN: Wash with plenty of water. P501: Dispose of contents/container to hazardous waste in accordance with local, state or national legislation.

Date: \_\_\_\_\_ Initial \_\_\_\_\_

Emergency: Infotrac (800-535-5053)  
 Refer to the SDS for more information

VORYS

PLASKOLITE

# RCRA-Compliant Container (CAA)

- Full drum
- Sealed drum – tip test
- RCRA hazardous waste label
- DOT label
- Accumulation date



VORYS

PLASKOLITE<sup>★</sup>



## Document Request (3 years)

---

- Weekly inspection logs
- Annual/biennial hazardous waste report
- Signed manifests
- Employee RCRA training log (+ job titles)
- RCRA training curriculum

**Plaskolite Tennessee, LLC. - Memphis, TN**

**Hazardous Waste Accumulation Area**

**2022 Inspection Summary (TN Rule 0400-12-01-.05(2)(f))**

**[Retention Time: 3 years minimum]**

<b>Date of Inspection</b>	<b>Time of Inspection</b>	<b>Inspector Name</b>	<b>Observations</b>	<b>Date of Repairs (if applicable)</b>	<b>Nature of Repairs (if applicable)</b>
1/4/2022	10:00 AM	Alex Busby	No leaks, all drums labeled, good condition, spill kit OK	NA	NA
1/11/2022	9:30 AM	Alex Busby	No leaks, all drums labeled, good condition, spill kit OK	NA	NA
1/18/2022	8:00 AM	Alex Busby	No leaks, all drums labeled, good condition, spill kit OK	NA	NA
1/25/2022	10:00 AM	Alex Busby	No leaks, all drums labeled, good condition, spill kit OK	NA	NA
2/1/2022	10:00 AM	Alex Busby	No leaks, all drums labeled, good condition, spill kit OK	NA	NA
2/8/2022	10:00 AM	Alex Busby	No leaks, all drums labeled, good condition, spill kit OK	NA	NA

**EMPLOYEE TRAINING LOG**

<b>First Name</b>	<b>Last Name</b>	<b>Job Title</b>	<b>Requirement</b>	<b>Last Completion Date</b>
Alex	Busby	Environmental Engineer	Hazardous Waste Management	8/3/2021
xxx	xxxx	Material Handler A	Hazardous Waste Management	7/8/2022
xxx	xxxx	Safety & Environ Mgr	Hazardous Waste Management	7/6/2022
xxx	xxxx	Operations Supervisor	Hazardous Waste Management	1/27/2022
xxx	xxxx	Operator 12 hr	Hazardous Waste Management	7/7/2022
xxx	xxxx	Assistant Operator 12 hr	Hazardous Waste Management	7/6/2022

## **Hazardous Waste Management Training**

**Description:** Define a hazardous waste, recognize standards that regulate hazardous waste, and identify requirements of hazardous waste management.

**Lesson Length (minutes):** 20

### **Outline:**

1. Introduction to Hazardous Waste
2. Handling Hazardous Waste
3. Special Instructions for Common Wastes
4. Emergency Response

### **Objectives:**

1. Define hazardous waste, explain the importance of managing it properly, and list the categories of hazardous waste generators.
2. List some actions industrial facilities use to manage hazardous waste and explain how you can assist your company with its hazardous waste management efforts.
3. Describe how to handle common types of hazardous waste.
4. Describe how you, and other individuals with various roles and responsibilities, should respond to an unintended release of hazardous waste.

### **References:**

1. Resource Conservation and Recovery Act (RCRA), 40 CFR part 260-265
2. 40 CFR 261 Subpart D
3. 40 CFR 261 Subpart C

## Document Request (cont.)

---

- RCRA contingency plan
  - Includes Quick Reference Guide (QRG)
- Hazardous waste reduction plan
- DOT hazmat certificate





# Closing Conference

---

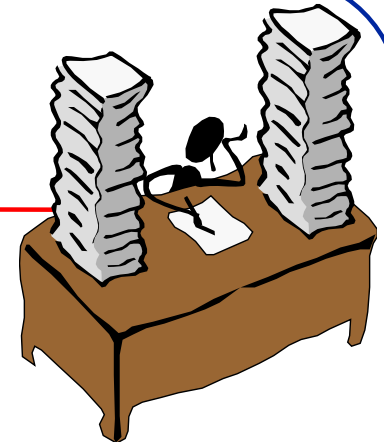
- Immediate field correctives
- State vs. USEPA dynamic
- List of issues/citations



VORYS

PLASKOLITE<sup>★</sup>

## Post-Visit Fallout



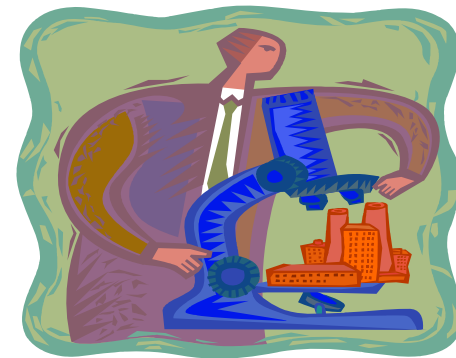
- Involved legal counsel
- >\$10,000 compliance efforts
- 10 written submittals
- Showcause meeting
- Consent Agreement & Final Order (CAFO)



## Post-Visit Fallout

---

- Unannounced CEI of Ohio site 2 weeks later
- Unannounced CEI of Memphis-area site 4 months later



VORYS

PLASKOLITE<sup>★</sup>

# Lessons Learnt

- Heightened RCRA awareness
- Label cabinet
- Weekly walkthroughs with staff
- Online training logs into RCRA format
- **NOTHING** is minor (labels, logs, HSM)

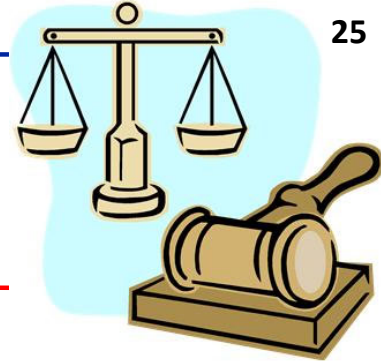


VORYS

PLASKOLITE<sup>★</sup>

# RCRA Post-CEI Enforcement

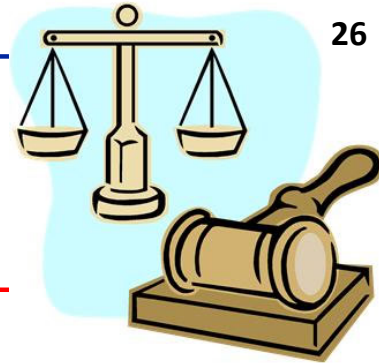
---



- USEPA may respond to RCRA violations with **FORMAL** or **INFORMAL** enforcement

## Formal Enforcement

---



- Includes administrative or civil actions
- Results in an enforceable CAFO that imposes monetary penalties
  - **Up to \$27,500\*\*** per day for each violation

## Informal Enforcement

---

- Includes notification of violations and require compliance within 240\*\* days

# Avoiding Large Fines

---

- **Retain experienced counsel**
  - **Help the business analyze the evidence**
  - **Form cooperative relationship with regulators**
- **Work together with the USEPA**
  - **Identify pragmatic solutions**
  - **Potential cooperation discount (10%)**

# Understanding Penalties

---

- USEPA penalty matrices (RCRA §3008)
  - Penalty calculations for RCRA violations
  - Violation's potential for harm & extent of deviation from requirement
  - Scale-up based on major/moderate/minor
  - USEPA discretion



**2003**

Potential  
for  
Harm

Extent of Deviation from Requirement

	MAJOR	MODERATE	MINOR
MAJOR	\$27,500 to 22,000	\$21,999 to 16,500	\$16,499 to 12,100
MODERATE	\$12,099 to 8800	\$8,799 to 5,500	\$5,499 to 3,300
MINOR	\$3,299 to 1,650	\$1,649 to 550	\$549 to 110

**2022  
(est.)**

	Major	Moderate	Minor
Major	\$47,423 - \$37,938	\$37,937 - \$28,454	\$28,452 - \$20,866
Moderate	\$20,864 - \$15,175	\$15,174 - \$9,485	\$9,483 - \$5,691
Minor	\$5,689 - \$2,845	\$2,844 - \$948	\$947 - \$190

## When It Becomes **CRIMINAL**

---

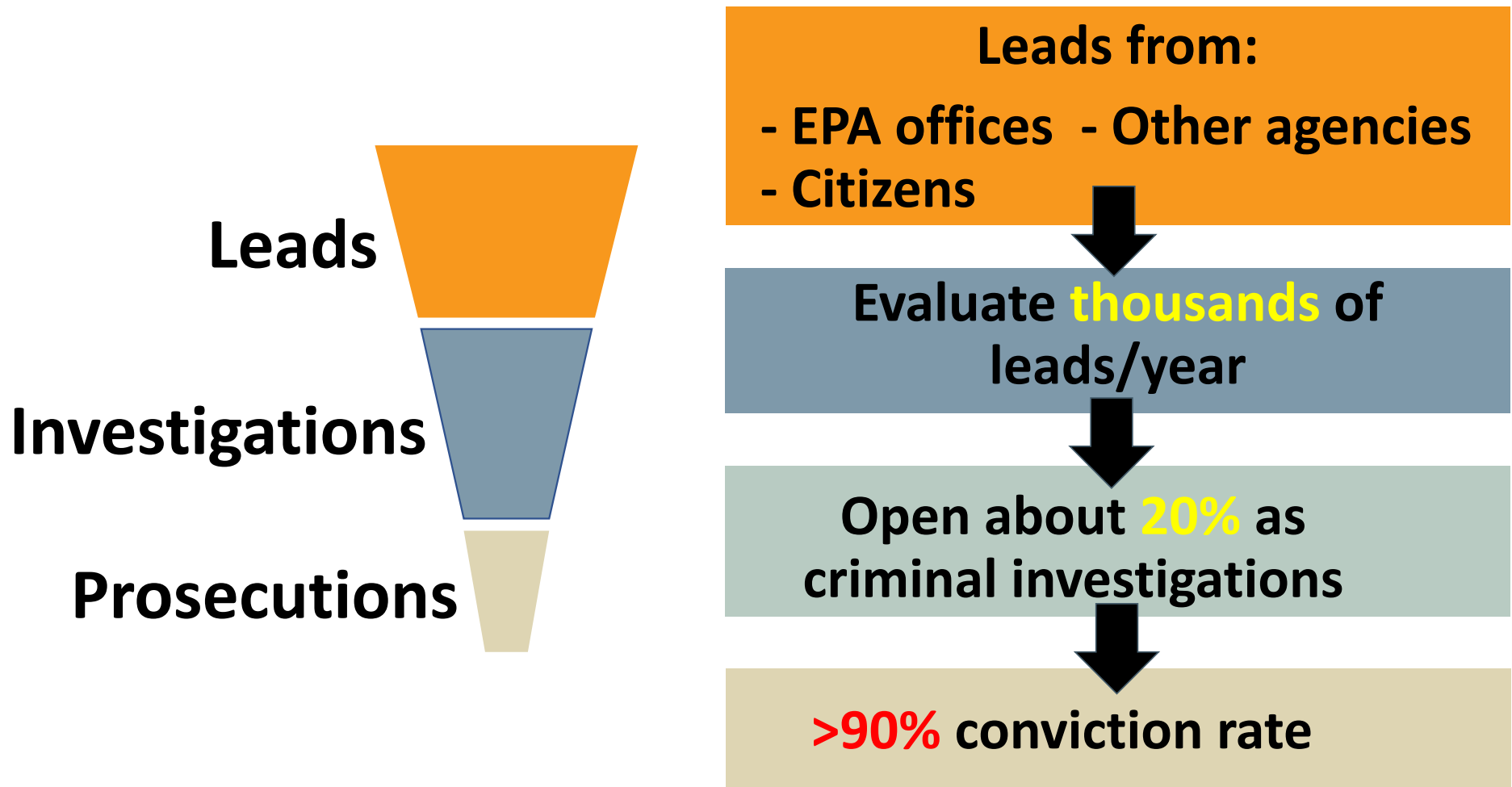
- False statements to the Government
- Obstruction
- Conspiracy

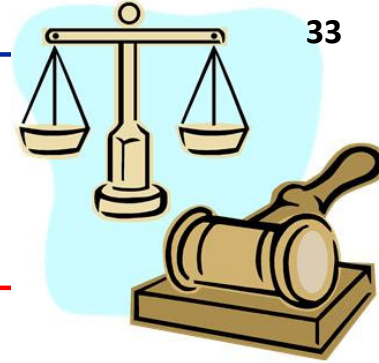


VORYS★

PLASKOLITE

# The Criminal Enforcement Process





## Criminal Intent

---

- Primary role of criminal enforcement: “Is it a civil or criminal violation(s)?”
- Perpetrator's mental state is KEY
- Offender must be shown to have acted knowingly in violating the law



## RCRA Trends

- **Increased RCRA CEI & enforcement**
  - **LQG (last EPA visit > 5 years)**
  - **SQG (if near LQG threshold)**
  - **VSQG (“desktop enforcement”)**
- **USEPA lead typically**
- **USEPA audit of states’ RCRA programs**

## A Thought...

**DON'T SWEAT THE "STUFF"  
THAT YOU CAN'T CONTROL ...**

**SWEAT THE "STUFF"  
THAT YOU CAN  
CONTROL !!!**



**VORYS**

★ **PLASKOLITE**

# Keep Out of RCRA (if possible)

---

- Substitution (e.g., parts washer)
- Waste reduction – SQG or VSQG
- Continued use (beneficial reuse)
- Universal waste rules



VORYS

★ PLASKOLITE

# Reduce Your “RED FLAGS”

- NEAR PERFECT RCRA paperwork
  - 3-year RCRA manifests
  - Waste determinations/profiles
  - Labeling in CAA and SAA
  - RCRA contingency plan (with QRG)



VORYS

★ PLASKOLITE



# Reduce Your “RED FLAGS”



- NEAR PERFECT RCRA paperwork (cont.)
  - Annual RCRA training logs
  - Weekly SAA and CAA inspections
  - Other applicable requirements (BB, CC)

VORYS

★ PLASKOLITE

# Reduce Your “RED FLAGS”



- Manage as if LQG
  - 90-day accumulation
  - RCRA contingency plan
  - Weekly CAA and SAA inspection (+log)
  - Annual RCRA training (+log)
  - Biennial RCRA reporting (if applicable)

VORYS

★ PLASKOLITE

# Reduce Your “RED FLAGS”



- **Robust** RCRA exemption documentation
  - Continued use/beneficial reuse
  - Universal wastes
  - Hazardous secondary material (HSM)
  - Recyclable materials (OAC 3745-51-06(A)(3))

VORYS

★ PLASKOLITE



# The Future – Inspections

- PFAS/PFOAs
- Backlog
- Inspections



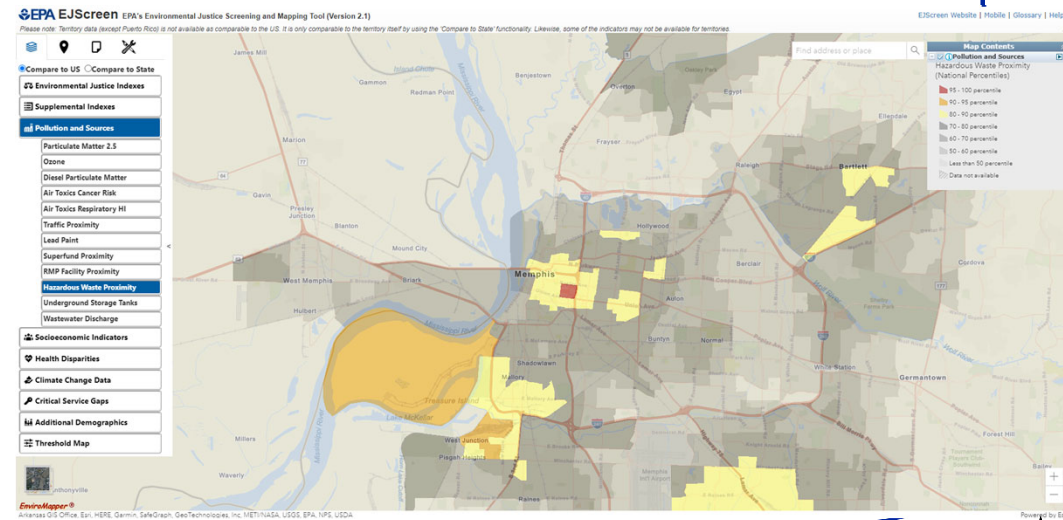
VORYS

PLASKOLITE<sup>★</sup>



# Environmental Justice

- Inflation Reduction Act (IRA)
  - \$2.8 bn by 2026
- EJScreen Map



VORYS

PLASKOLITE

## RCRA Trends

---

- In 2021, USEPA initiated two rulemakings to regulate PFAS under RCRA that could result in proposed rules in 2023



# Proposed PFAS Rulemakings

---

- **Add 4 PFAS chemicals as RCRA Hazardous Constituents (Appendix VIII)**
  - **These PFAS subject to corrective action**
  - **Step to regulating PFAS as a listed hazardous waste**



# Proposed PFAS Rulemakings

---

- Modify USEPA corrective action regulations to clarify that emerging contaminants (e.g., PFAS) can be cleaned up through the RCRA corrective action process





# Proposed PFAS Rulemakings

---

- Once proposed, these rules would still need to go through the notice and comment process and be promulgated as final rules before taking effect





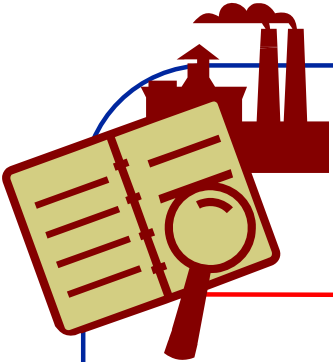
## RCRA Trends

- **USEPA requested substantial increases in its budget for Fiscal Year 2023**
  - **Specifically for compliance monitoring and enforcement**
  - **Including \$42 million for civil enforcement**



## RCRA Trends

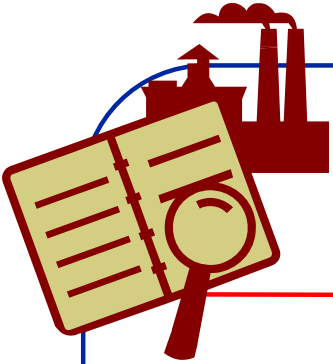
- Regulated entities can likely expect an uptick in both RCRA inspections and enforcement actions in 2023, as compared to 2022



## Final Thoughts

---

- **As more states adopt the new Definition of Solid Waste, regulated industries can anticipate new exemptions/restrictions to RCRA requirements in 2023**



## Final Thoughts

- **USEPA is currently seeking comment on its proposed national enforcement and compliance initiatives for FY 2024-2027**
  - **Includes a proposal to remove its initiative to reduce toxic air emissions from hazardous waste facilities\*\***

# Final Thoughts

---

- Defend with documentation
- Operator compliance clarity
- Understand where inspector is coming from
- Don't show fear
- Experience





## Final Thoughts

- Prepare **now** for USEPA RCRA CEI
- USEPA can/will find something, so “sweat-the-details”
- Prepare your upper management (\$)

VORYS

★ PLASKOLITE

# Burning Questions

---



**VORYS**

**PLASKOLITE**



## Biographical Information

**Timothy W. Ling, P.E.**  
**Corporate Environmental Director**  
**PLASKOLITE, LLC.**  
**400 West Nationwide Boulevard, Suite 400, Columbus, Ohio 43215**  
**(800) 848-9124, [tim.ling@plaskolite.com](mailto:tim.ling@plaskolite.com)**

Mr. Ling is the Corporate Environmental Director for PLASKOLITE, LLC., a Columbus-based manufacturer of continuously processed plastic sheet. Mr. Ling is responsible for PLASKOLITE's environmental compliance at its 12 manufacturing facilities in Ohio, California, Texas, Mississippi, Tennessee, North Carolina, New Jersey, Massachusetts, Pennsylvania and Mexico. He has over 32 years of experience in environmental engineering, both as a consultant to businesses, and now in a corporate-level environmental role. He has spoken and written on a wide range of environmental and energy management topics.

Mr. Ling graduated at the top of his class with a Bachelor of Science degree in Civil Engineering from the Florida Institute of Technology (1989). He also holds a Master of Science degree in Civil Engineering from the University of Notre Dame (1991). He is a Registered Professional Engineer in the states of Ohio and Florida.

---

**David M. Edelstein**  
**Partner**  
**Vorys, Sater, Seymour and Pease LLP**  
**301 East Fourth Street, Suite 3500, Great American Tower, Cincinnati, Ohio 45202**  
**(513) 723-4007, [dmedelstein@vorys.com](mailto:dmedelstein@vorys.com)**

Mr. Edelstein is a Partner in the Vorys Cincinnati office and a member of the finance, energy and real estate group. His practice is focused on environmental enforcement, regulatory, and transactional matters. Prior to joining Vorys, David served as chief of the criminal enforcement unit for EPA Region VI in Dallas, Texas. He also served as a RCRA enforcement attorney for the EPA Region VI.

Mr. Edelstein has a Bachelor of Science degree in Biology from Ohio Northern University (2003), a Master's Degree in Environmental Science from Cleveland State University (2007), and a Juris Doctorate from the Cleveland-Marshall College of Law (2007).

---

**Alexander S. Busby**  
**Environmental Engineer**  
**PLASKOLITE, LLC.**  
**400 West Nationwide Boulevard, Suite 400, Columbus, Ohio 43215**  
**(800) 848-9124, [alex.busby@plaskolite.com](mailto:alex.busby@plaskolite.com)**

Mr. Busby is the Environmental Engineer at PLASKOLITE, LLC.'s Mississippi and Tennessee facilities. He is responsible for maintaining the environmental compliance and fire protection programs at these sites, including RCRA hazardous waste, Title V air permitting, NPDES permitting, Tier II and Tier III reporting, fire sprinkler testing, and pressure vessel inspections. He also provides chemical process engineering support at these sites.

Mr. Busby graduated from Ohio University with a Bachelor of Science in Chemical Engineering in 2020. He maintains several Safety and Chemical Engineering Education (SChE) process safety certifications, and is a member of the National Association for Corrosion Engineers (NACE).