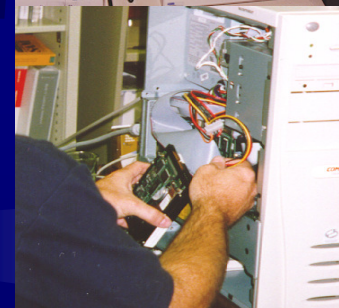


# Clean Air Act Criminal Investigations

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# Clean Air Act Criminal Investigations

## Presentation Topics:

- ✦ Criminal vs. Civil Approach
- ✦ Targeting vs. Finding Criminal Cases
- ✦ Criminal CAA case examples



# Criminal vs. Civil Approach

## ★ Who Does What?

- EPA CID conducts criminal investigations, refers cases to prosecutors and provides support during prosecution.
- EPA NEIC conducts civil investigations, assists CID in criminal investigations, refers cases to prosecutors and provides support during litigation.

# Criminal vs. Civil Approach

- ★ State and Local Agencies traditionally have criminal and civil investigation/prosecution authority
  - ★ State Environmental Agency (EPA, DEP, DEQ, etc.)
  - ★ State Attorney Generals Office

# Criminal vs. Civil Approach

- ★ Criminal and Civil case elements are more similar than not...

## Out There



"Say Mister...I think your dog is trying to tell you he's found something!"

The background is a dark blue field with several large, semi-transparent gears of various shades of blue. On the left side, there is a vertical strip with a colorful, abstract, and somewhat pixelated pattern in shades of orange, yellow, and brown. The main title is centered at the top in a large, yellow, sans-serif font.

# Criminal vs. Civil Approach

★ Similar elements include:

- ★ Regulations
- ★ Investigation
- ★ Evidence collection and management
- ★ Enforcement actions
- ★ Environmental harm



# Criminal vs. Civil Approach

★ What turns a violation into a crime?

- ★ Actual harm
- ★ Threat of actual harm
- ★ Failure to report a discharge or release
- ★ Certain illegal conduct trends
- ★ Acts of concealment/deception



# Criminal vs. Civil Approach

★ Examples of what makes a violation a crime:

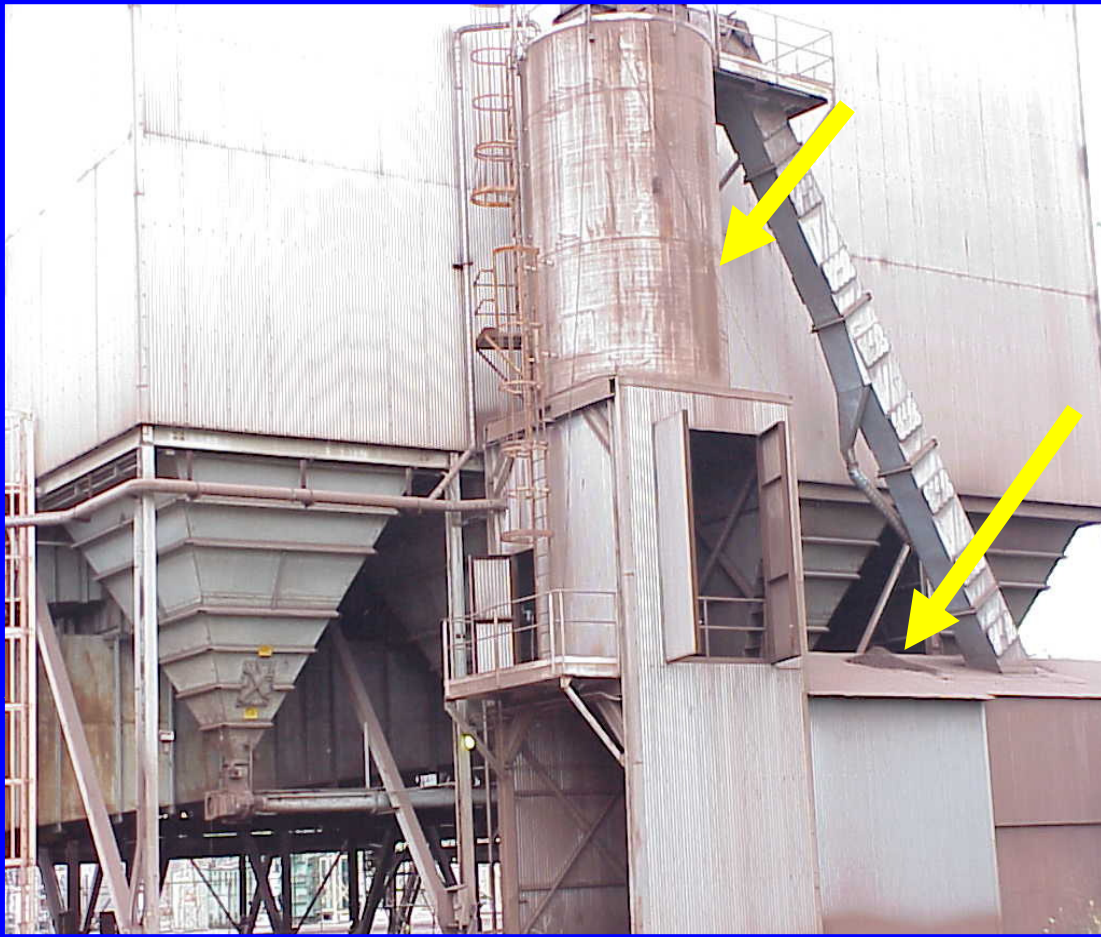
- ★ Repeated history violations
- ★ Concealment or falsification of records
- ★ Failure to notify, obtain permit
- ★ Tampering with a monitoring device
- ★ Operation of pollution-related activities without a permit or other required documentation



# Criminal vs. Civil Approach

- ★ What makes it a crime?
  - ✿ Lying, cheating, stealing.
  - ✿ Flagrant, deliberate, repeated violations
  - ✿ Deception: cover ups.
  - ✿ Willful blindness: head in the sand.
  - ✿ Too cheap – choose to violate law rather than spend money. More than just economic decision to delay operational changes.

# Work practices and fugitive emissions



# Sample Containers





Representative Samples



# Criminal vs. Civil Approach

- ★ Why bring a criminal case?

- Deterrence: prison vs. penalties
- Intent of violator: knowing vs. not knowing
- Program integrity in the era of self-reporting
- Level playing field

- ★ Reasons to bring a criminal case are similar to those for bringing a civil case but for the burden of proof



# Criminal vs. Civil Approach

- ✦ *Does not* require proof that person knew the law.
- ✦ Does require proof that person knew the facts constituting the offense.
- ✦ Knowledge and all other elements must be proven beyond a reasonable doubt.

# Criminal vs. Civil Approach

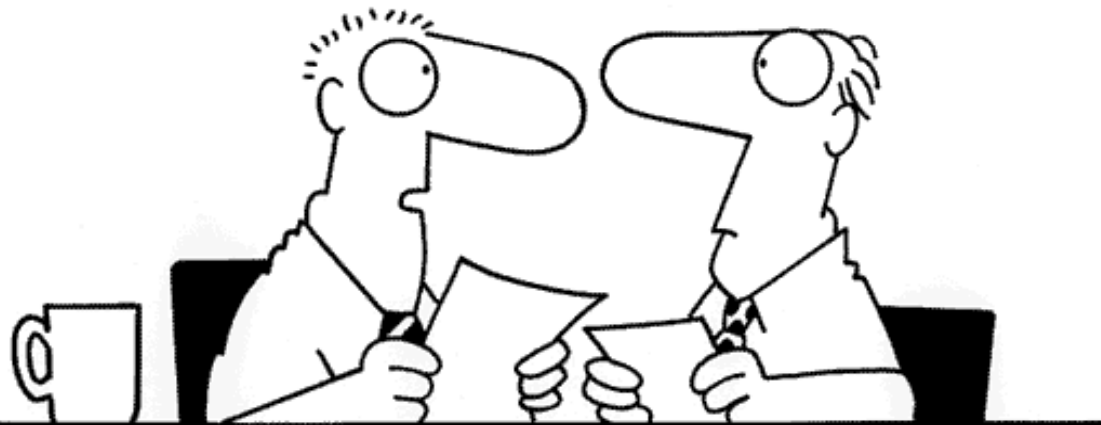
## ★ Criminal vs. Civil differences:

- ★ Criminal Case: Convince judge / jury that defendants merit being labeled “criminals”
- ★ Criminal Case: Enable jurors to psychologically distance themselves from defendants
- ★ Civil Case: Injunctive relief and economic benefit are fundamental to the case.

# Targeting vs. Finding Criminal Cases

- ★ Targeting and finding cases is about teamwork between the criminal and civil programs

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**“My new approach to effective team development will take a bit longer. In my plan, we raise them from birth.”**





# Targeting vs. Finding Criminal Cases

- ✦ **Facilitate relationships**, with the goal of enhancing the identification, investigation and criminal prosecution of Clean Air Act cases.
- ✦ **Foster discussions** between the regulators and investigators, with the goal of identifying more criminal investigations.
- ✦ **Enhance the knowledge base** of criminal investigators, prosecutors on the basics of the CAA.

# Targeting vs. Finding Criminal Cases

- ★ Targeting / finding criminal cases uses the same theories as civil cases environmental cases: profits, arrogance, etc.
- ★ What's the motive?
  - ★ \$\$\$\$\$\$\$\$\$
  - ★ Air pollution control devices, operating costs, and maintenance are costly.
  - ★ Most times more production = more air pollution but also = greater profits.



# Targeting vs. Finding Criminal Cases

✦ How do we as regulators tap into the criminal fact patterns to find cases?

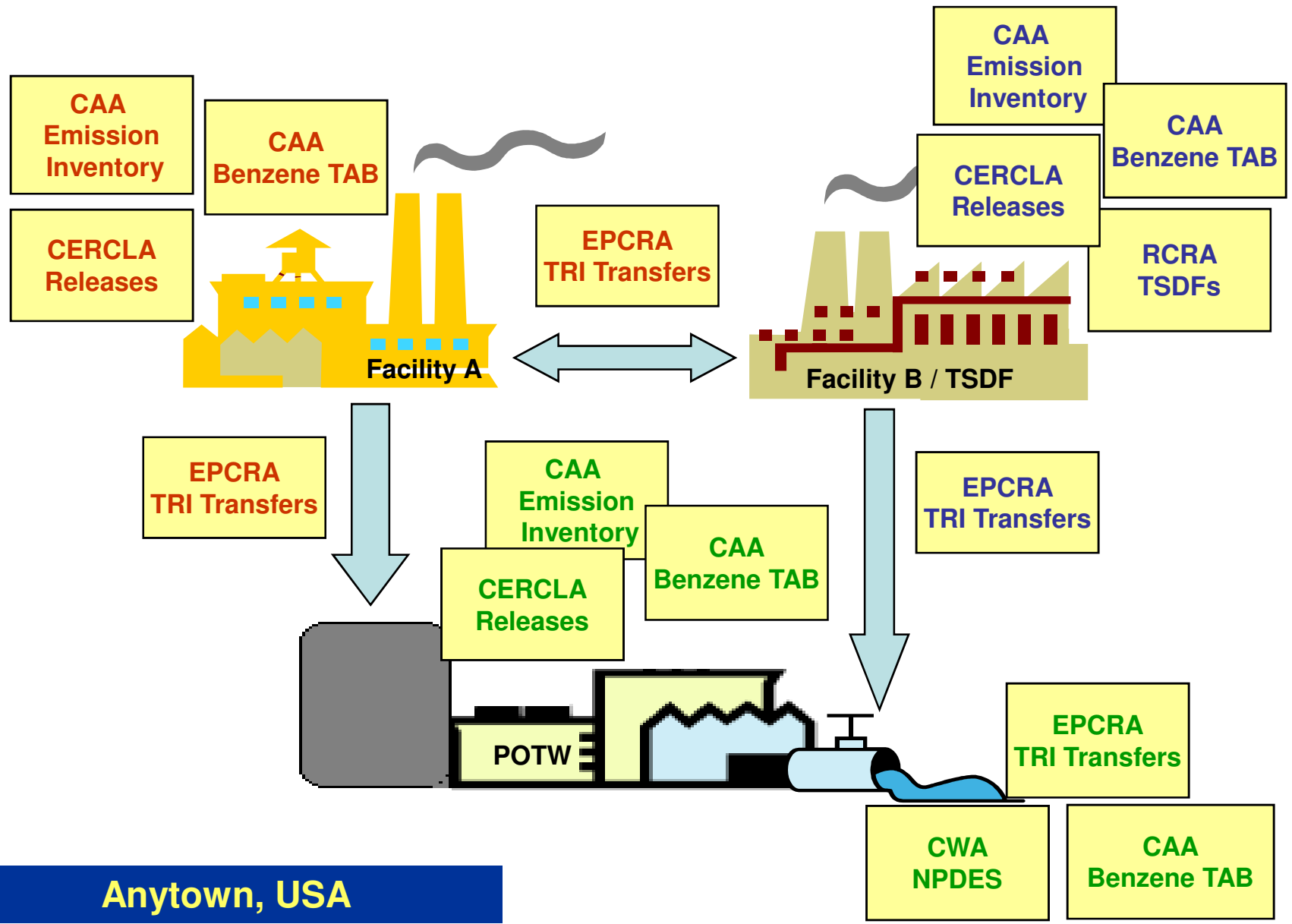
- ✦ Targeting through data analysis
  - ✦ EPCRA TRI, CERCLA, Annual Emission Statements, Title V Fees, etc.
- ✦ Targeting through inspector observations
- ✦ Leads from Local, State and Federal Agencies, public, industry, etc.

# Targeting vs. Finding Criminal Cases

## ☀ Example 1

- Wool Fiberglass Manufacturing MACT (Air Toxics NEP / 40 CFR 63 Subpart NNN)
- During Civil Investigations, industry represented they were unaware of methanol emissions.
- Regulatory docket contains both emission studies and comments by the same corporate entities claiming no knowledge of methanol emissions.
- Possible Motive: compliance with MACT; avoiding additional control requirements; lower emission fees; etc.

# Targeting vs. Finding Criminal Cases





# Targeting vs. Finding Criminal Cases

- ★ Title V case: *Multi Color Label*
- ★ PSD case: *Tyler Pipe*
- ★ LDAR case: *Pacholski*
- ★ Stack Testing: *Pacific States*
- ★ SIP: Bulk Gasoline Loading

# *United States v. Littlehale and Taylor*

- ☀ Defendants were employed by Multi-Color Corporation, which produces the labels for consumer branded products
- ☀ Littlehale was Vice-President of Manufacturing and Taylor was Plant Manager of the Scottsburg, Indiana plant





# Investigation

- ★ The Scottsburg label facility operated a Press #3 without an operation permit and without ANY air pollution controls for a period of 6 months:
  - ★ over **92 tons of VOCs** were released into the environment
  - ★ Multi-Color Corporation produced more than **\$7.2 M** of product



# Investigation & Prosecution

- ★ Roger Taylor, plant manager, agreed to plead guilty and cooperate with the government.
  - “I’ll make more money from running the plant than I will pay in fines to the EPA” Littlehale, June 1997
- ★ 12/7/97 Littlehale signed and filed a Title V application in which he swore that the press was not operating, that the press was connected to proper pollution controls and that when operations did start the plant would be in compliance with state and federal laws.
- ★ On the morning of trial, Littlehale pleaded guilty to Making a False Statement under the Clean Air Act. Admitted he lied on the Title V application.

## Crimes under 42 U.S.C § 7413(c)(2)(a): False Statements

- ✦ Any person who KNOWINGLY -
  - ✦ Makes any **false material statement**, representation, or certification in, such document, or
  - ✦ Omits material information from, or knowingly alters, conceals or fails to file or maintain any such document, notice, record, report, plan or any other document required to be filed or maintained (either by the State or the Administrator)



## Crimes under 42 U.S.C § 7413(c)(2)(B): False Statements and Tampering

- ✦ Any person who KNOWINGLY fails to notify or report as required OR falsifies, **tampers with, renders inaccurate, or fails to install any required monitoring device or method** required to be maintained or followed under this chapter
  - ✦ *Amitech* case example

# Other Crimes relevant to CAA (Title 18 offenses)

- ✦ Conspiracy (incl. Klein conspiracy) (18 USC § 371)
- ✦ False Statements (18 USC § 1001)
- ✦ Obstruction of Justice (18 USC §§ 1505/1519)
- ✦ Mail fraud/Wire Fraud (18 USC §§ 1341/1343)
- ✦ Witness Tampering (18 USC § 1512)



# NSR Permits: what to look for

- ✦ Did the company give an explanation for excess emissions? What are insiders saying was true cause?
- ✦ What was the permit condition violated based on: local, state or federal requirement?
- ✦ Control devices: why was it bypassed, tampered with? How? Safety issue?



# NSR: what to look for

- ☀ Control devices: is there a pattern to the device being bypassed or shutdown?
- ☀ What are the codes on the emissions monitors?
- ☀ Did the agency tell the facility it was acceptable/unacceptable?
- ☀ Collect all data company reports anywhere re: emissions, hours, output, etc., and check for inconsistencies:
  - ☀ E.g., state regulators, Acid Rain data, facility's own insurance co. (will incl. max. reported capacity of the unit)

# *Tyler Pipe: Major NSR (PSD) Case*

- ★ “Major modifications” subject to PSD permitting requirements
- ★ Major mod = net increase of 25T/yr; here, PM increased from 39.64T/yr to 197.45T/yr
- ★ Major mod requires use of BACT and obtaining preconstruction permit
- ★ 11/98-1/99: Tyler demolished & reconstructed the “grandfathered” cupola at its Texas facility
- ★ Tyler falsely claimed this was “routine maintenance”
- ★ 2005: Tyler PG to 18 USC 1001 and 42 USC 7413(c)(1) [knowing violation of CAA preconst. reqs], paid criminal fine of \$4.5M and, as part of 5-year term of probation, agrees to upgrade structures at its facility, which costs ~\$12M



# MACT cases

- ✦ Records are required to be kept for 3 years. Look for:
  - ✦ Production data, stack testing data, maintenance records.
- ✦ Intentional bypass: failure to install or maintain required control devices, yet certify that they are in compliance.





# Areas of Focus: Continuous Emission Monitors

- ✦ Cases involving the tampering with CEM's.
  - ✦ Alteration of the computer programs to interpret data inaccurately or to go off line before a violation is recorded.
  - ✦ Direct tampering with the CEM device:  
*Louisiana Pacific* example.



# Areas of Focus

- ✦ Disconnecting control equipment without notifying agencies.
- ✦ Illegal bypasses.
- ✦ Making modifications to existing process without obtaining a permit or after being denied permit. *Especially* if potential/actual emissions increase significantly and/or cost savings.



# Areas of Focus: Stack Testing

- ★ Stack Testing: potential for fraud and false statements in the generation of data related to stack testing data.
- ★ 42 U.S.C. 7413 c (2) (C) Any person who knowingly...falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter....2 years imprisonment.



# Stack Testing: What It Is & Why It Matters.

- Means to determine if a facility is meeting emission limits.
- Many times is the only quantitative measure of what is coming out of a facility.
- Area just ripe for fraud and false statements.
- Why? \$\$\$ both for facility and consultant.



# *Pacific States Cast Iron Pipe Co.*

- ★ Sept. 18, 2000 Compliance Test
  - Charlie orders enough pig iron be purchased months prior to the test
  - “Pig Mix for Test” ‘recipe’
  - Achieved 3.8 pph PM10 (limit was 6.9 pph)
  - “Whoa, that’s too good!”
  - Lowest opacity in September was on stack test day (20 violations on other days)
- ★ Melting feedstock:
  - typically 75% shredded material, mostly shredded cars, remainder returns and heavy material – NO PIG IRON
  - Compliance test days: 40% to 63% pig iron, little or no shredded, remainder heavy material

# *Pacific States (cont.)*

## ★ Nov 2005 Indictment

- Conspiracy
  - CAA: 42 U.S.C. 7413(c)(2)(C): knowingly render inaccurate a monitoring method
  - CAA: 42 U.S.C. 7413(c)(2)(A): false material statement and omission in document (stack test report)
  - 18 U.S.C. 1001: 3 Counts: PS recycled the bad numbers from inaccurate stack tests for three years in Annual Emissions Inventories
- ★ McWane pleads guilty in Feb. '06 to two False Statements, pays \$3M fine
- ★ Charlie Matlock pleads guilty in Feb. '06 to CAA count; sentenced to a year and a day and \$20,000 fine in June, '06

# SIP Case

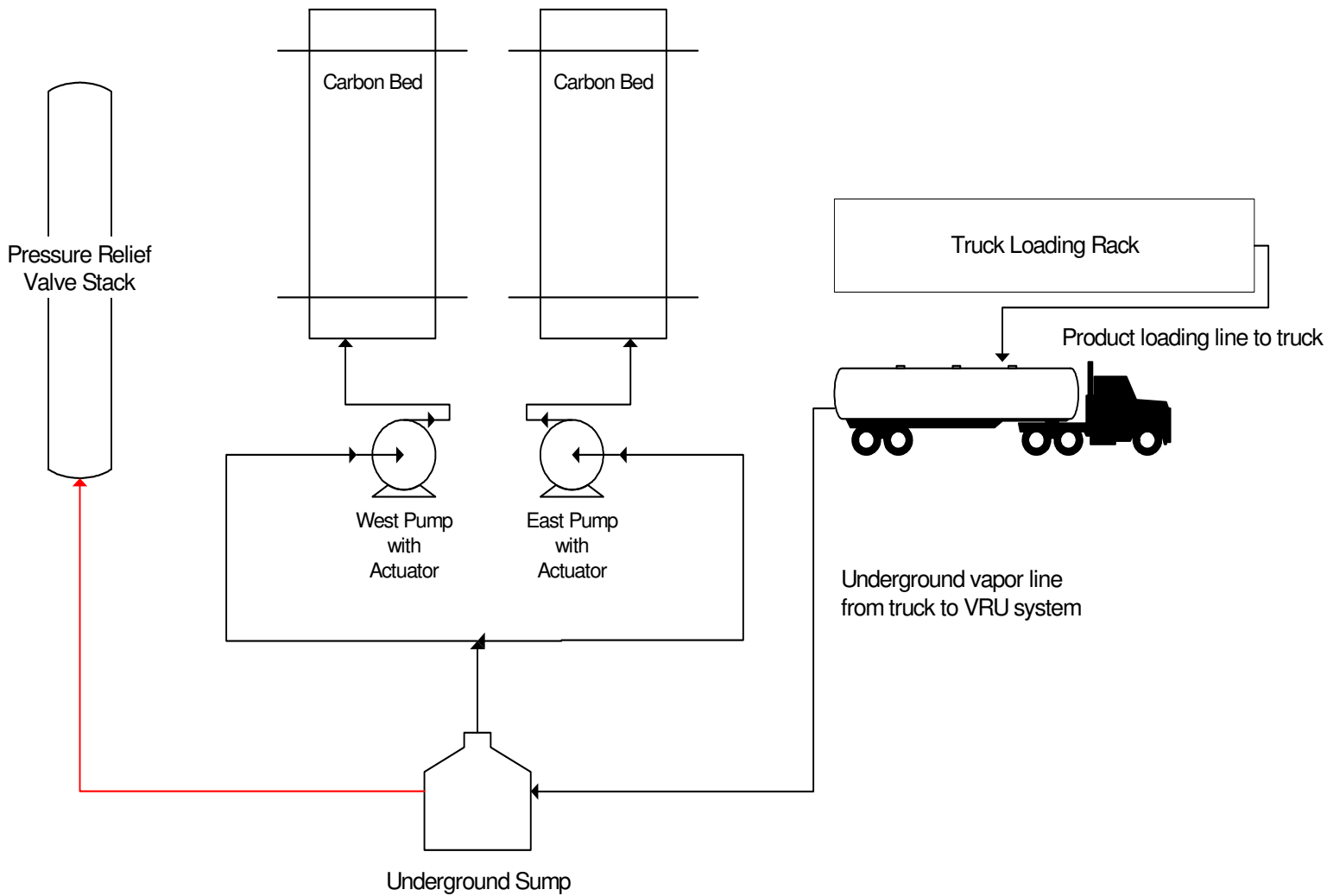
- ✦ Bulk gasoline terminal
- ✦ Allegations of bypassing emission control devices when trucks were filling
- ✦ EPA NEIC support to CID included:
  - ✦ Process evaluation
  - ✦ Technical evaluation of control devices
  - ✦ Field measurement activities

# Gasoline Loading Rack Emission Controls





### Truck Loading Rack Vapor Recovery Unit



- Hydrocarbon fuel vapors when VRU is operating
- Hydrocarbon fuel vapors when VRU pump actuator valve closes due to power loss