

Securities and Commodities Enforcement

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THE SEC'S INCREASED SCRUTINY

- The SEC is increasing scrutiny of the energy industry with an emphasis on:
 - Accurate reserve reporting
 - Impairments
 - Accounting errors
 - Deficient internal controls
 - Untimely or delinquent filings
 - Anti-bribery and corruption



SEC INVESTIGATION ISSUES

- Accounting and the Fraud Task Force
- Valuation of Reserves and Property
- Misleading Statements and Use of Proceeds
- Smaller “Broken Windows” and Delinquent Filings
- FCPA Actions for Bribery or Deficiencies in Internal Controls
- Cybersecurity Disclosures

ASSET VALUE AND PROJECTIONS

- Fixed asset values and reporting
- Estimates of well profitability
- Disclosures of reserves with other than fair market value
- Disclosure related to low commodity prices
- Porosity percentages
- Value “per barrel” for speculative drilling compared to producing wells



ACCOUNTING, BOOKS AND RECORDS

- Assets and Liabilities
- Mischaracterization of revenue
 - Accounting for sale of working interests
- Revenue recognition
 - Timing
 - Loan proceeds
- Expense items



MISLEADING STATEMENTS

- Flow rate for wells, pipelines and spills
- Joint venture proceeds and use of funds
- Unregistered sellers – finders and commission-based employees
- Risk disclosures
- Return estimates and “guarantees”
- Understatements of expenses



PRIVATE OFFERING ISSUES

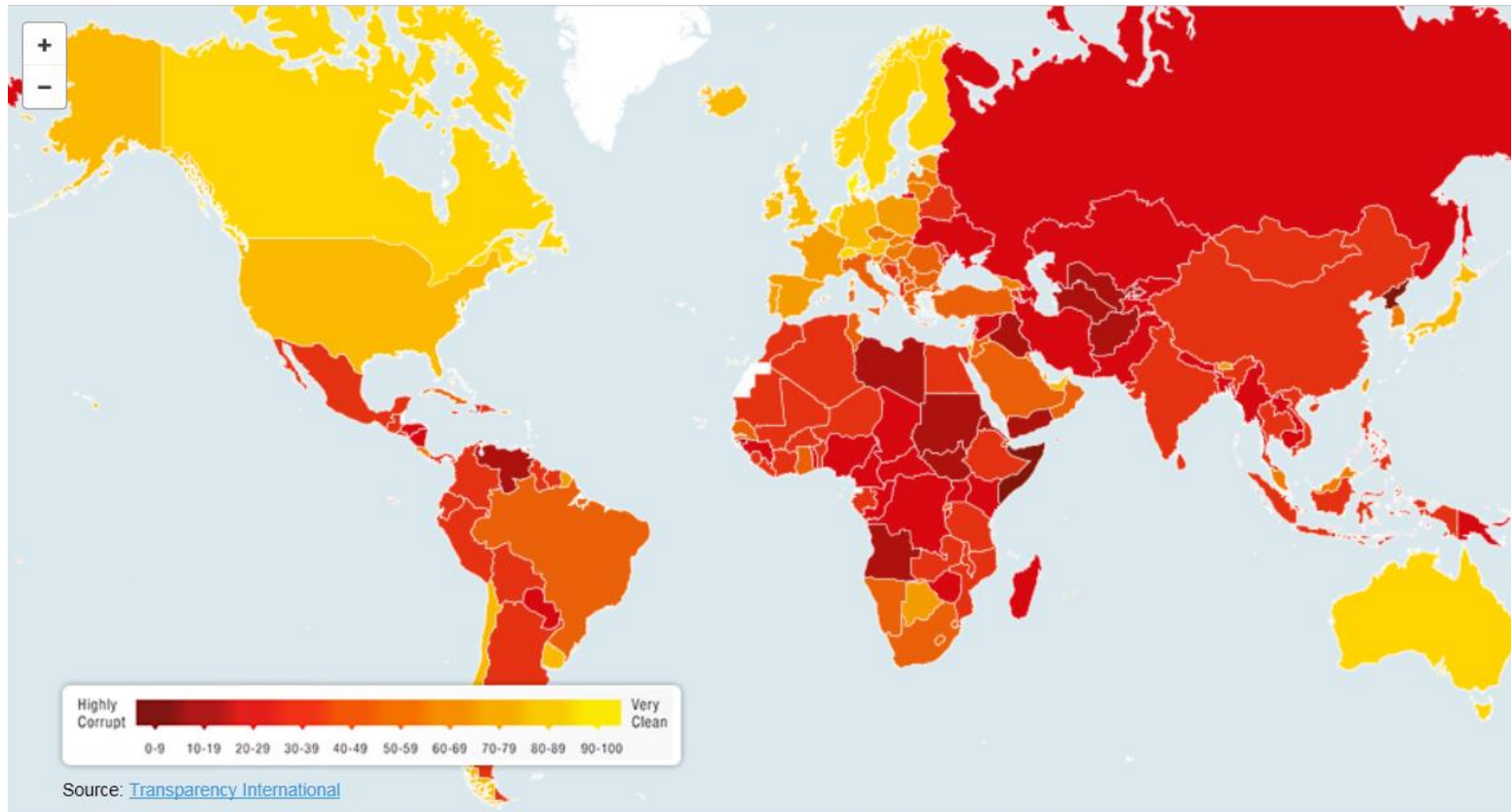
- Common Themes
 - Misuse of investor funds
 - Misrepresentation about potential returns and risk
 - Registration (Missteps in exemptions)
 - Misrepresentation about qualifications/experience
 - Accounting misrepresentations
 - Misrepresentation of the state or value of well reserves
 - Omission of other material information
- From Aug 2012 to present there have been over 20 enforcement actions filed against energy-related private companies and individuals
- Reg D Rule 506(c) offerings

BROKEN WINDOWS CONCEPT

- Delinquent periodic filings
- Late filings of ownership reporting
- Form 8-K failures

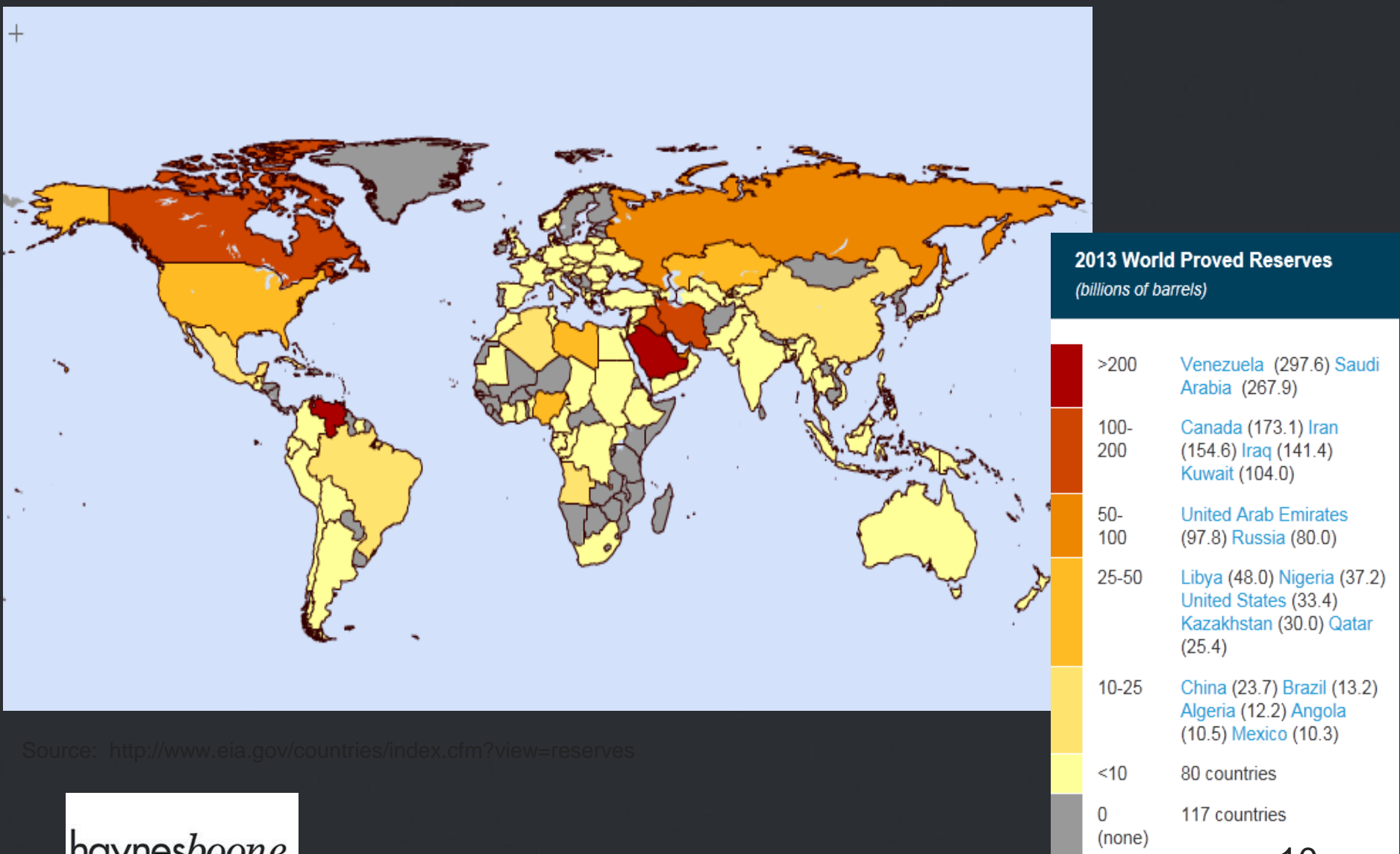


TI'S CORRUPTION PERCEPTION INDEX 2014



Source: http://en.wikipedia.org/wiki/Corruption_Perceptions_Index#/media/File:Transparency_international_2014.png

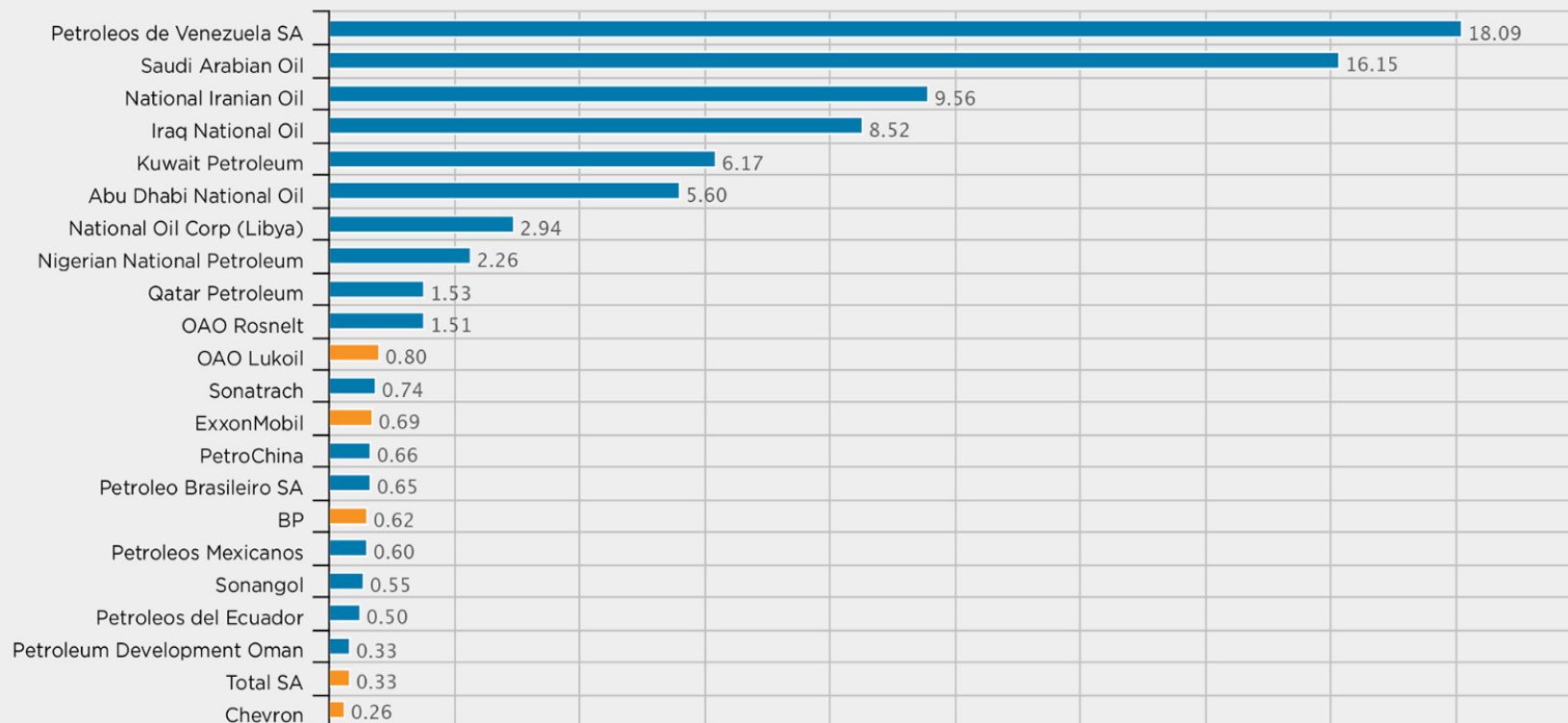
EIA'S WORLD OIL RESERVES



Source: <http://www.eia.gov/countries/index.cfm?view=reserves>

WORLDWIDE OIL COMPARISON

2013 Largest Oil Companies (percent of worldwide proved reserves)

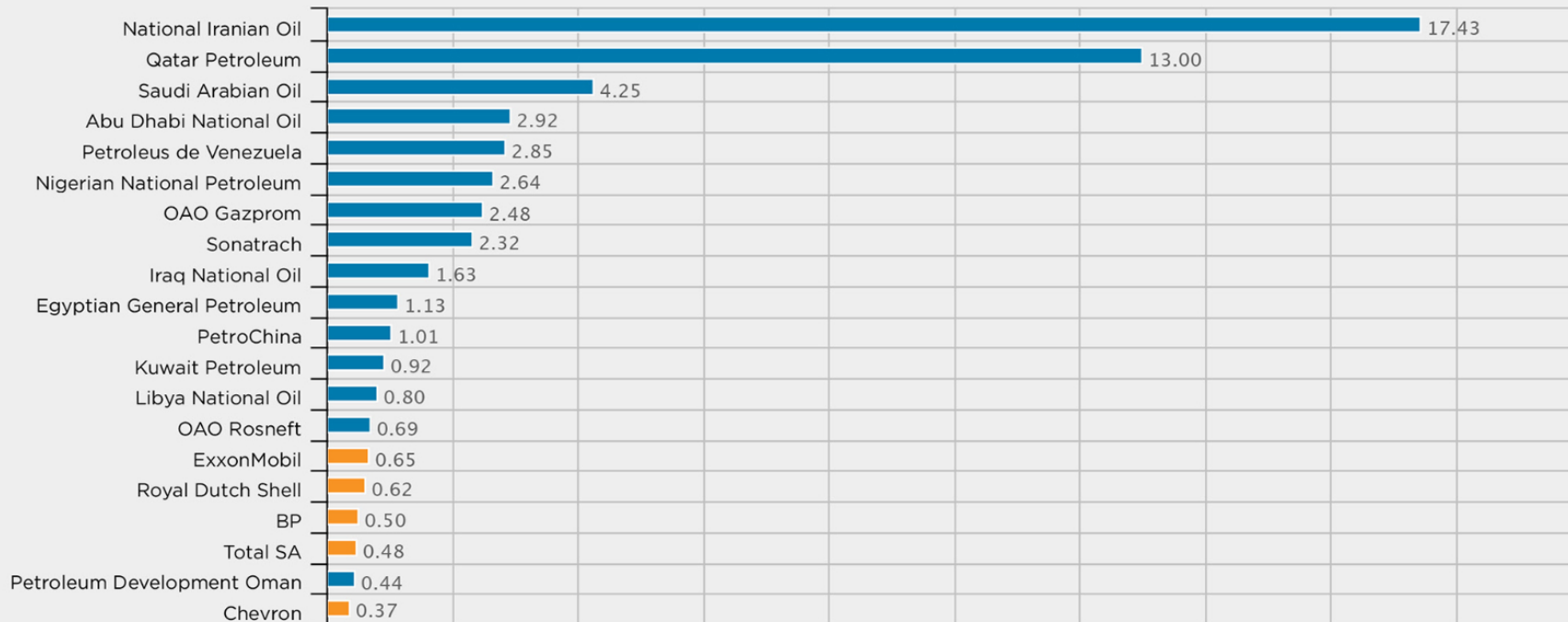


Source: Calculated from EIA estimated world total of 1.6 trillion barrels in 2013 and Oil & Gas Journal, September 1, 2014.

Source: <http://www.api.org/~media/primer-images/high-res/2013-largest-oil-companies.jpg?la=en>

WORLDWIDE NATURAL GAS COMPARISON

2013 Largest Natural Gas Companies (percent of worldwide proved reserves)



Source: Calculated from EIA estimated world total of 6,846 trillion cubic feet in 2013 and Oil & Gas Journal, September 1, 2014.

Source: <http://www.api.org/~media/primer-images/high-res/2013-largest-natural-gas-companies.jpg?la=en>

MAJOR RISK AREAS

- Global risk: compliance with foreign anti-corruption laws



- Insufficient internal controls
- M&A transactions – successor liability
- Intermediaries & third parties
- Gifts, meals, and entertainment

FCPA ENFORCEMENT ACTIONS

- BHP Billiton (\$25 million penalty)
- Layne Christensen (\$4.76 million disgorgement and interest plus \$375,000 penalty)
- Weatherford Int'l (\$67 million penalty to the SEC; \$87 million penalty to DOJ; and \$100 million fines to three Other Agencies)
- Total, S.A. (\$153 million in disgorgement to the SEC; \$245.2 million penalty to DOJ; Deferred Prosecution Agreement)
- Parker Drilling Co. (\$3.05 million disgorgement to the SEC plus \$1.04 million interest; \$11.76 million penalty to DOJ)
- Noble Corp. and three executives (\$8 million to the company; injunctions and penalties against executives)

INTERNAL CONTROLS EXPANSION

- The FCPA require issuers to adopt accounting controls that “provide **reasonable assurances** that . . . transactions are executed in accordance with management’s authorization.”
- Enforcement agencies interpret this to require companies to adopt robust anti-corruption compliance programs.
- Recent enforcement actions by the SEC have focused on the requirement that companies adopt internal controls sufficient to “**prevent and detect**” violations of the books and records provisions of the FCPA.
 - Archer Daniels Midland Co. \$54 million settlement
 - Goodyear \$16 million settlement



CYBERSECURITY RISKS

- Corporation Finance Disclosure Guidance
- Identification of Risk Areas and Cyber Protections
- Information for Investors upon Breach



MANIPULATION – CFTC & FERC FRAUD-BASED RULES

- Dodd-Frank amended the CEA
 - Provided CFTC with broad new authority to prohibit manipulation
 - Patterned after SEC Rule 10b-5
 - Rule 180.1
 - Intentional or reckless
 - Use of manipulative device, scheme, or artifice to defraud
 - False or misleading statements of material fact or material omissions
 - Act, practice, or course of business which operates or would operate as fraud or deceit
 - Delivery of false or misleading reports concerning market information
- Lower standard of proof
- Untested in federal court

INVESTIGATIVE FOCUS OF CFTC AND FERC

- Market fundamentals versus trades
- Uneconomic activity
 - Buying/selling at less than competitive prices
 - Incurring losses
 - Foregoing profits
- Affecting index prices
- Affecting settlement prices
- Patterns
 - Large volumes
 - Sudden reversals or swings in positions
- Emails, IMs, recorded trading lines



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Environmental Enforcement and Investigations

Trends and Tips

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How environmental investigations start

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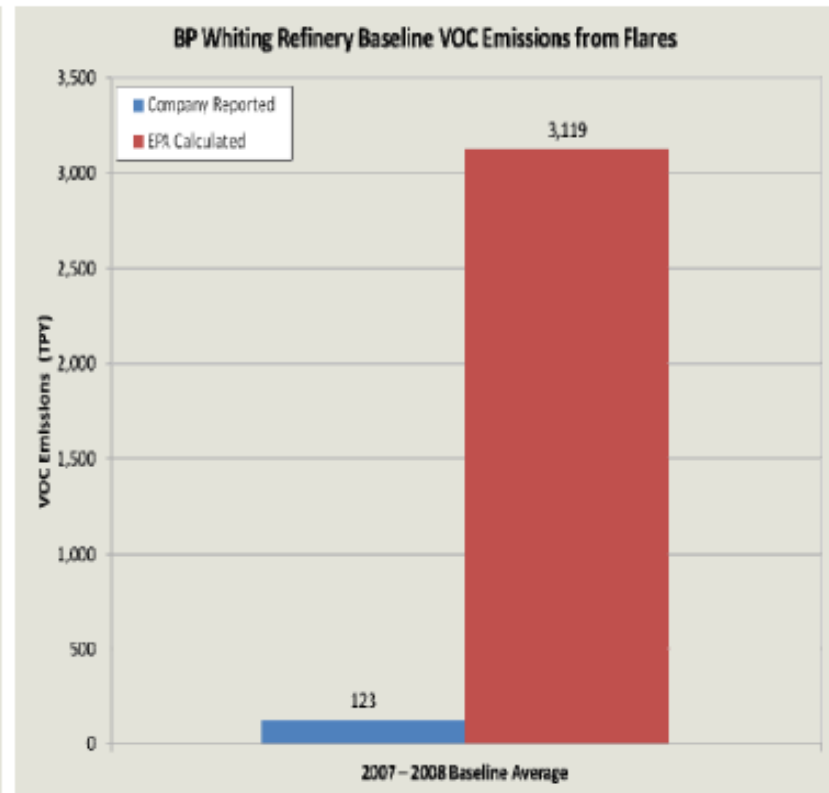
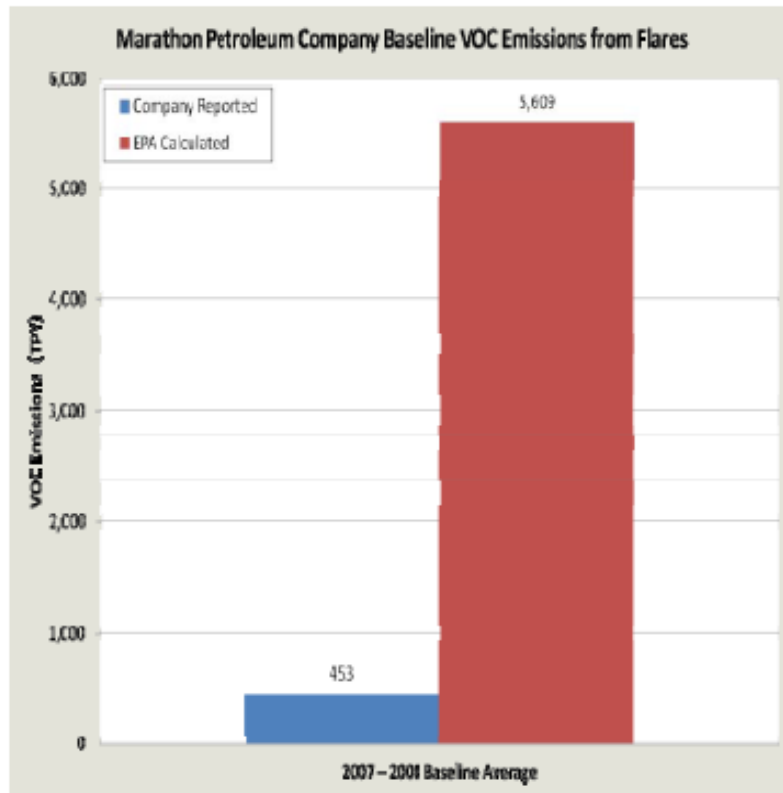
LOVE THY NEIGHBOR

Where is the agency getting its information

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NEXT GENERATION COMPLIANCE

Example: Advanced monitoring in flare enforcement – ‘Estimating v. Knowing’ – **BP Whiting and Marathon CAA CDs**



PFTIR data showed that **actual emissions (in red)** at Marathon and BP were 25 times and 10 times greater, respectively, than the companies' **best engineering estimates (in blue)**



DOING MORE WITH LESS

Next Generation Enforcement

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SPEAK SOFTLY...

Tips and pitfalls of negotiating with EPA

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2015 Government Enforcement in the Energy Industry

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Criminal Antitrust Proceedings

- A. Historical Context – Antitrust and the Energy Industry
- B. Key Distinctions Between Antitrust and Other Investigations
 - 1. Criminal Penalties
 - 2. Crisis Response
 - 3. Corporate Leniency
- C. Ethical Considerations
- D. Corporate Compliance Tips

Historical Context

- A. Standard Oil – 1911
- B. Industry Cycles/Downturns – 1980s-1990's – Price Fixing, Bid Rigging, Market Allocations
- C. Industry Collaborations
 - 1. April 2011 – DOJ Oil and Gas Price Fraud Working Group
 - 2. June 2011 – FTC Market Manipulation Investigation (Refiners, Producers, Transporters, Marketers, Traders)
 - 3. February 2012 – Gunnison Energy – SG Interests (Natural Gas Leases)
 - 4. 2012 – Present – Chesapeake Energy -- Encana

Key Distinctions in Antitrust Proceedings

A. Criminal Penalties

1. Corporate
2. Individuals



Crisis Response

- A. Subpoena
- B. Drop-in Interviews
- C. Search Warrants
- D. Dawn Raids



Corporate Leniency Policy

- A. Part A – First-in; No government investigation (Marker System)
- B. Part B – First-in; Some government knowledge
- C. “Amnesty Plus”
- D. “Penalty Plus”
- E. Late To The Game “Benefits”
- F. Individual Leniency

Ethical Considerations

- A. Who is the Client?
- B. Joint Defense Arrangements
 - 1. Individuals
 - 2. Competitors
- C. Attorney-Client Privilege
 - 1. Waiver Not Required
 - 2. Non-Waiver Agreement



Corporate Compliance Tips

- A. Training, Training, Training
- B. Whistleblower Program
- C. Crisis Response Policy/Procedures



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