

Criminal offences

- ➔ Environmental Permitting Regulations replicate substantive Directive requirements
- ➔ “Water discharge activity” – cause or knowingly permit polluting matter to enter a watercourse
- ➔ Permit is a defence
- ➔ No permit, or breach of permit, is a criminal offence
- ➔ Strict Liability
- ➔ Unlimited fines

Approach to prosecution

⇒ No duty to prosecute

⇒ Code for Crown Prosecutors

⇒ realistic prospect of success and

⇒ in the public interest

- intent
- foreseeability
- environmental effect
- deterrent effect
- offender's history

⇒ 89 businesses prosecuted 2013, *total* fines £1.5m

Sentencing Council Guidelines 2014

⇒ Range £450,000 - £3m

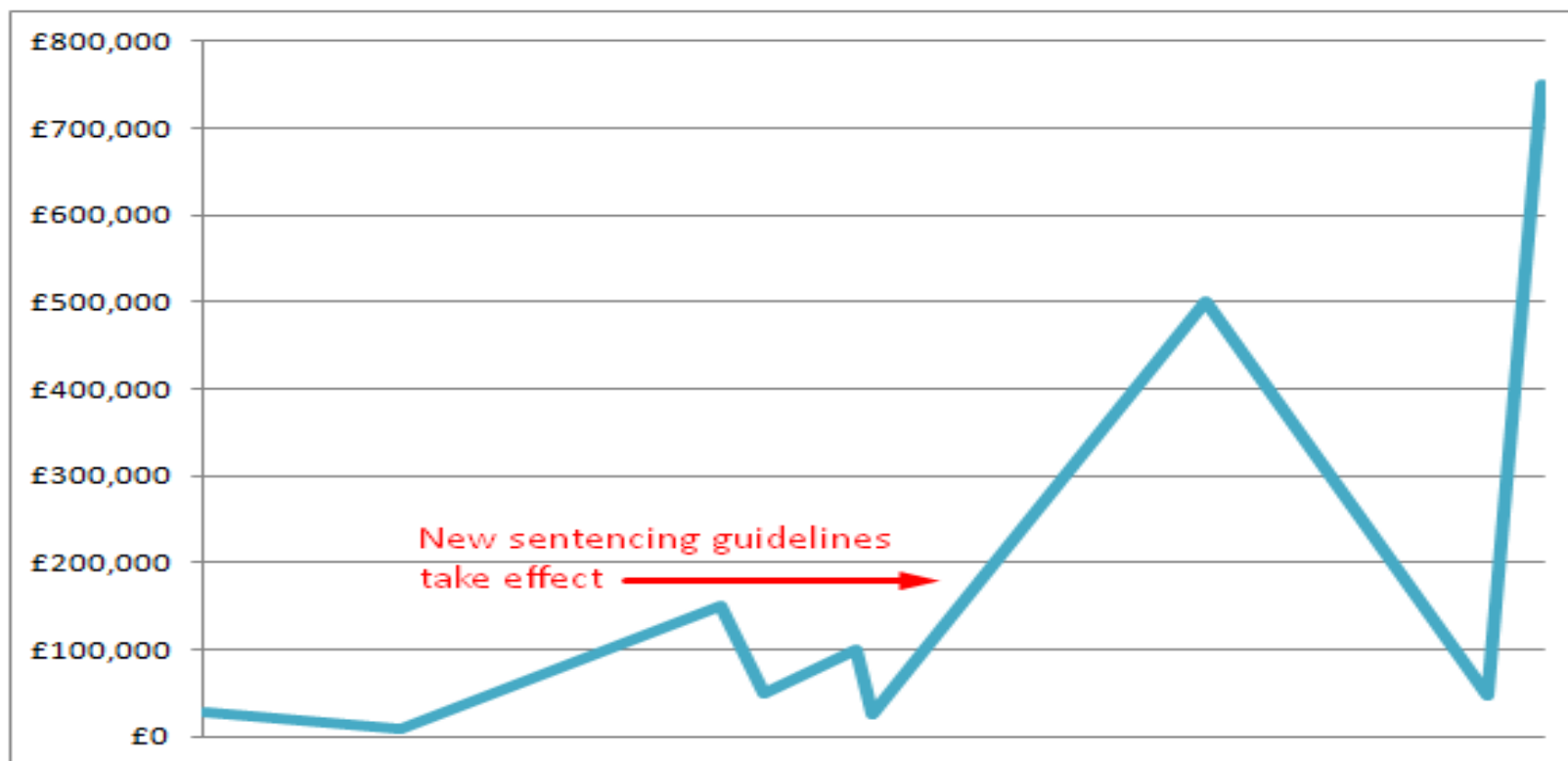
- ⇒ category 1 incident, major harm
- ⇒ large company (£50m turnover)
- ⇒ deliberate

⇒ Range £400 - £3,500

- ⇒ category 4 incident, risk of localised harm
- ⇒ small company (£2-10m turnover)
- ⇒ low or no culpability

Water Company Fines July '13 to Feb '15

Water Company Fines July 2013 - February 2015



Macrory Sanctions - VMPs

⇒ Variable Monetary Penalties

- ⇒ Imposed by the Environment Agency
 - ⇒ Limited number of offences (not main water pollution offence)
 - ⇒ Up to £250,000 per offence
 - ⇒ Appeal to First Tier Tribunal
-
- ⇒ ...none imposed to date

Macrory Sanctions 2 – Enforcement Undertakings

- ➔ Offered by the ‘offender’
- ➔ ‘Reasonable grounds to believe offence committed’
- ➔ Undertakings to:
 - ➔ Remedy harm
 - ➔ Prevent recurrence
 - ➔ Compensate those affected
- ➔ Acceptance by regulator prevents prosecution
- ➔ Practice with Packaging Offences

Environment Agency use of Macrory Sanctions to date

YEAR	Fixed Monetary Penalty	Variable Monetary Penalty	Compliance Notice	Restoration Notice	Stop Notice	Enforcement Undertaking	£ EU Cost Recovery	£ EU Financial Contribution
2015	0	0	0	0	0	7	17,706	75,118
2014	0	0	0	0	2	39	76,576	557,690
2013	2 (2 Notices of Intent, 0 Final)	0	0	0	4	47	117,009	1,515,805
2012	7 (7 Notices of Intent, 3 Final)	1 (1 Notice of Intent, 0 Final)	0	0	0	63	109,319	696,277
2011	0	0	0	0	0	27	40,955	256,024

Enforcement Undertakings extended 2015 – Environment Agency guidelines:

- ⇒ For category 1 incidents, only normally accepted when low or no culpability

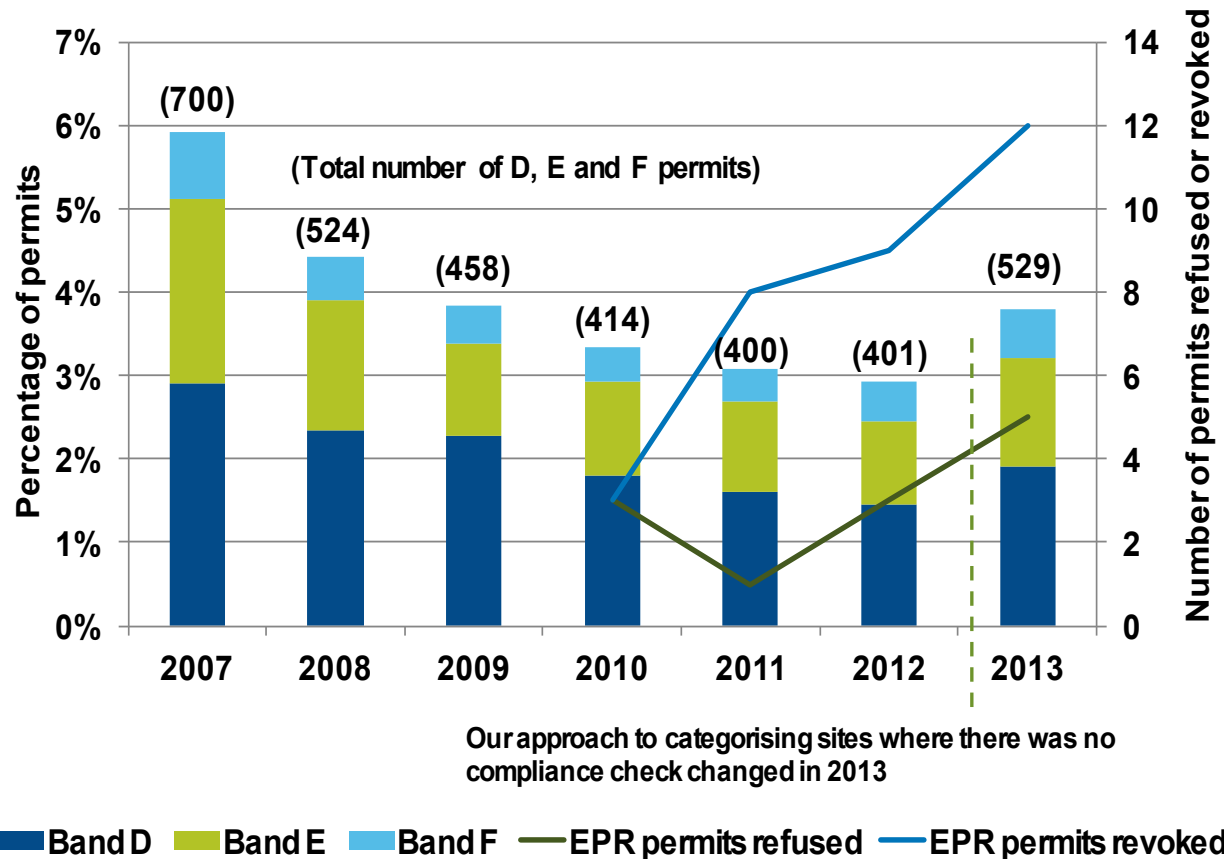
- ⇒ For category 2 incidents, only normally accepted when either
 - ⇒ low or no culpability
 - ⇒ or negligent

Combined effect of Sentencing Guidelines and Enforcement Undertakings

- ➔ Serious offending (substantial harm or intent) - criminal conviction and high fine
- ➔ Less serious offending (moderate harm or low culpability) - enforcement undertaking and environmental restoration

Earlier intervention with existing powers

EPR permits rated for poor compliance (all sectors) in England, 2007 to 2013

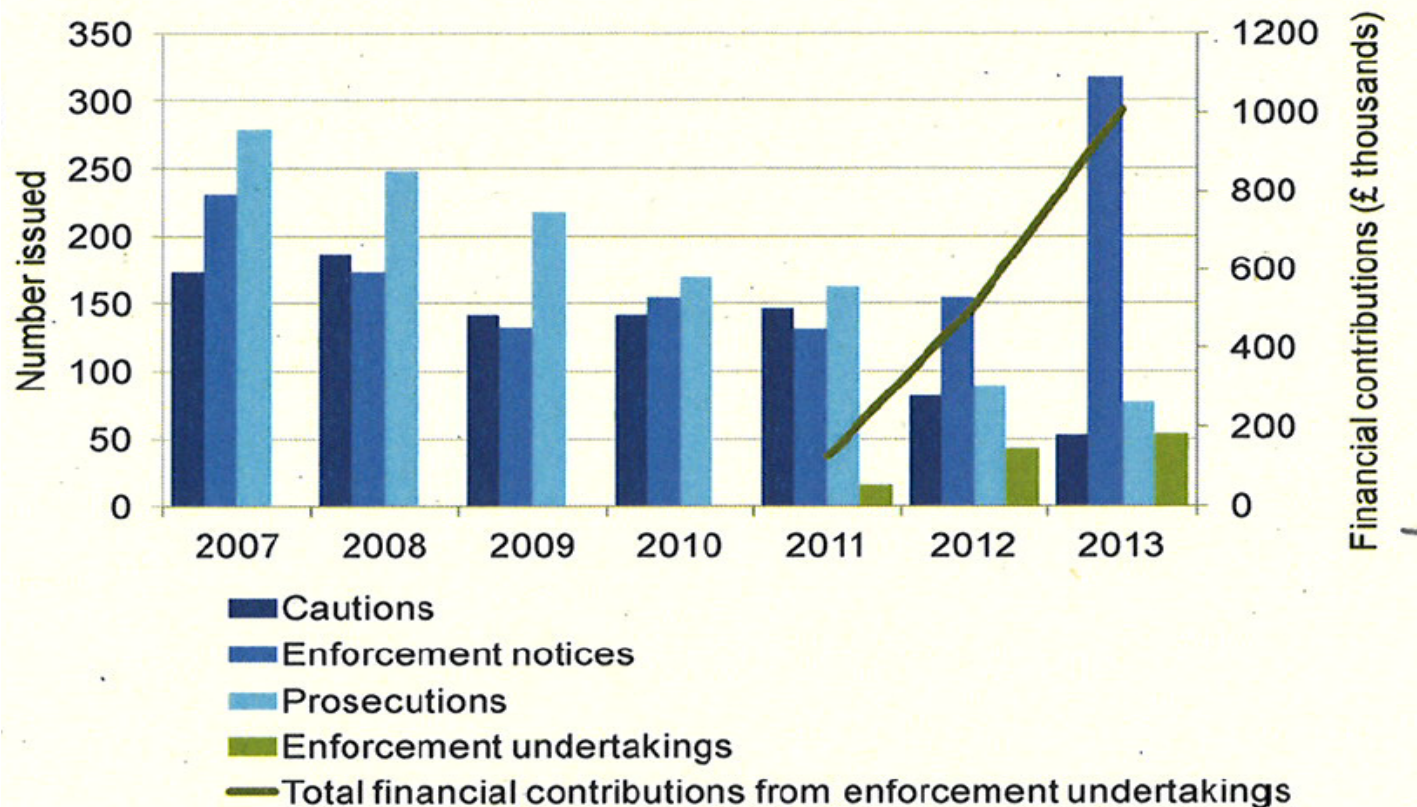


Persistent poor performers
Permits in compliance bands D, E or F in 2012 and 2013



Earlier intervention with existing powers

Enforcement actions used (all sectors) in England, 2007 to 2013



New approaches for regulated sites

- ➔ Financial provision for waste sites
- ➔ Management system with application
- ➔ Higher technical competence requirements
- ➔ Higher charges for
 - ➔ first year
 - ➔ persistent poor sites
- ➔ Suspension at high risk sites for non-payment of charges
- ➔ Wider power to suspend

Thank you