

EPA's National Settlement of with the Department of Interior for Alleged Violations at BIE Schools and BIA Water Systems Serving Those Schools

Kathleen Johnson

Senior Manager

Regional Enforcement Coordination Program

U.S. Environmental Protection Agency, Region 9

2011 Annual EPA-Tribal Conference

10/19/2011



Welcome & Introductions



Overview

- Background about the case
- Summary of the settlement
- BIE schools in Region 9
- Potential impact on affected tribes

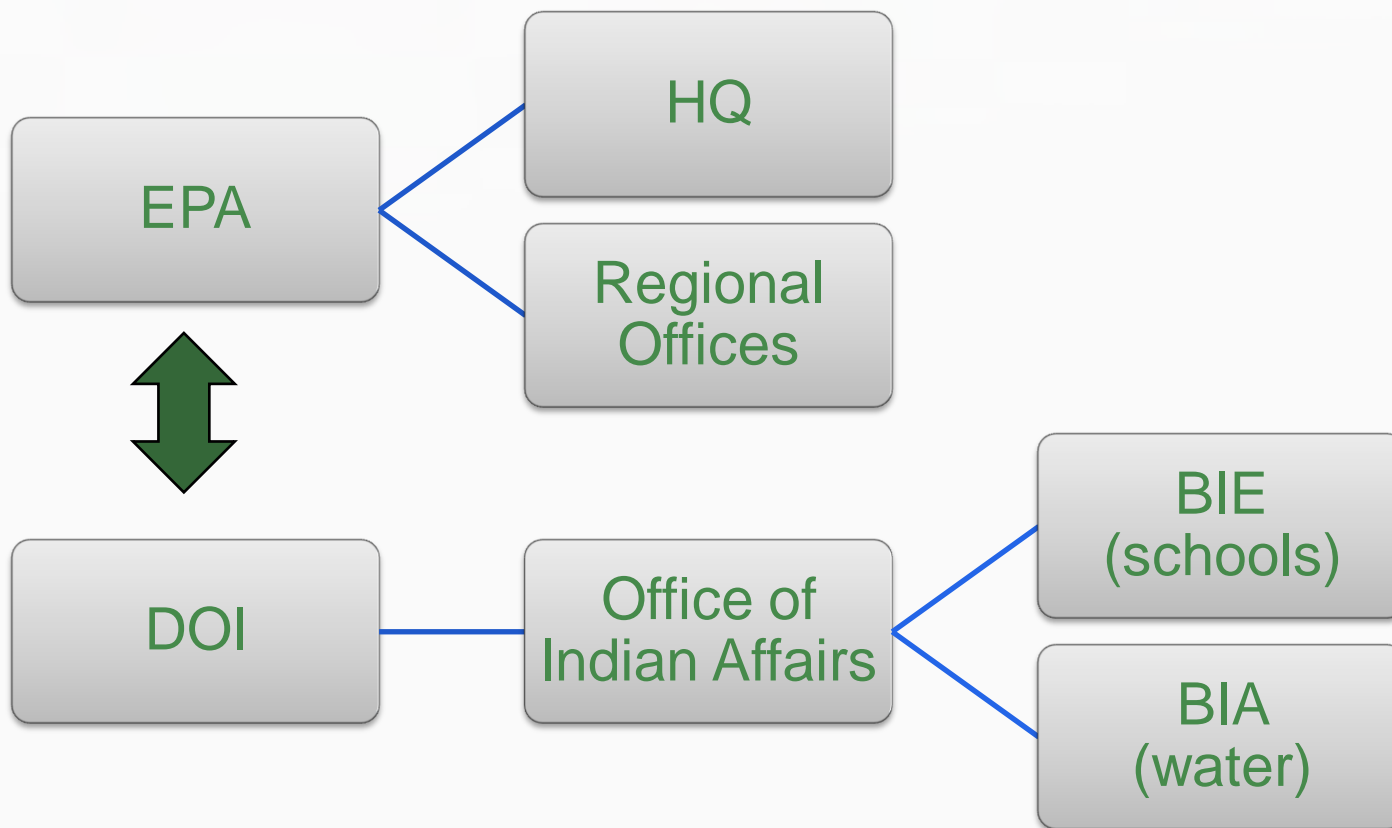


Background About the Case

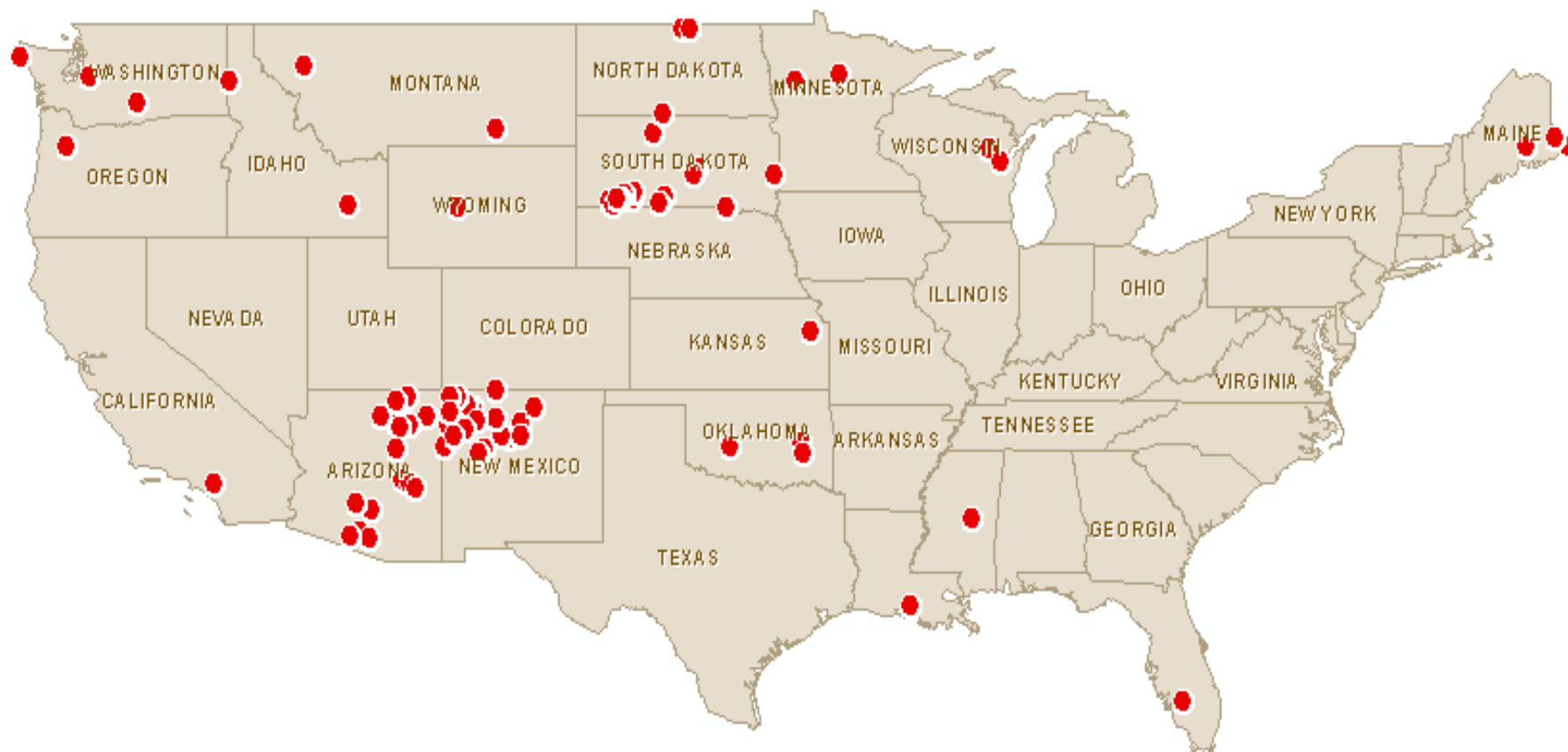
- EPA's National Indian Country Enforcement and Compliance Assurance Priority.
- EPA inspections of BIE schools: FY 2005 – June 2008 found wide-spread, systematic non-compliance with 7 federal environmental laws.
- Analysis of BIA water systems showed wide-spread, systematic non-compliance.



Parties to the Case

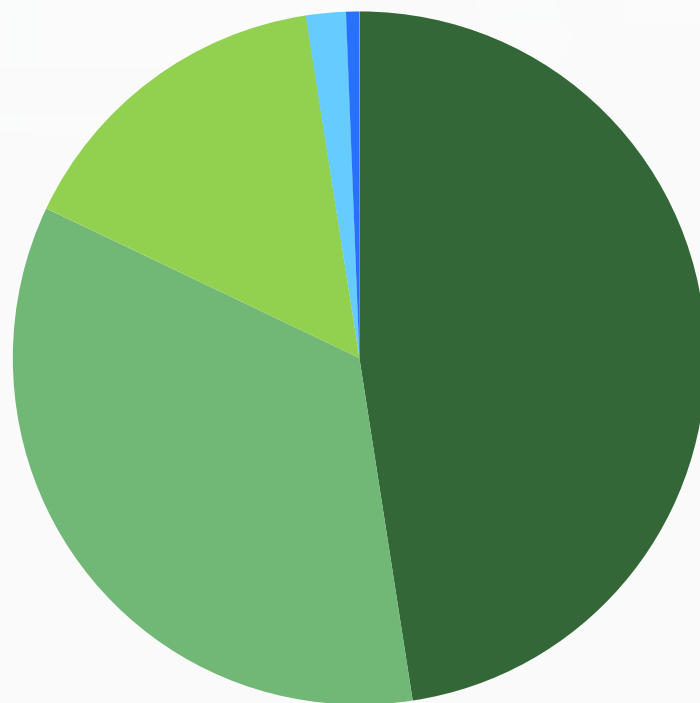


Geographic Distribution of Violations





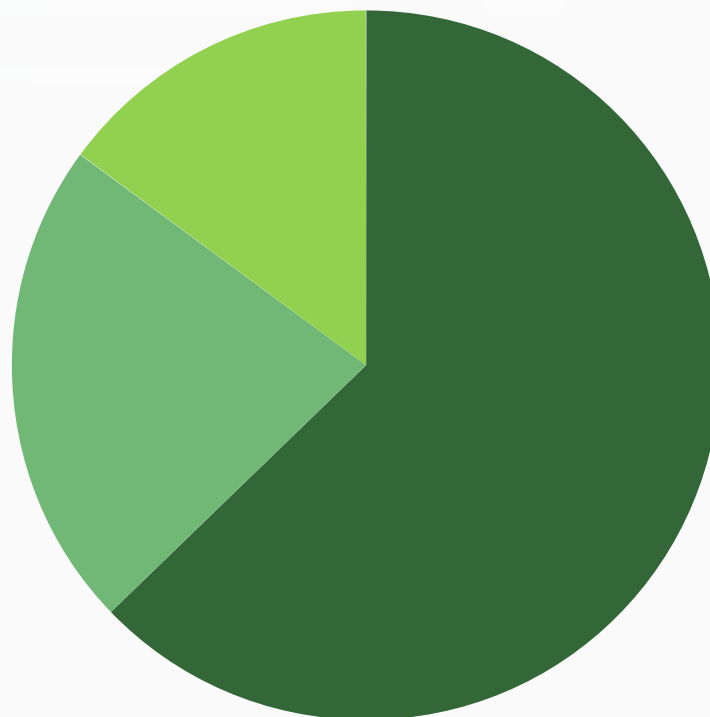
Asbestos Hazard Emergency Response Act (AHERA) – 162 Violations



- Record Keeping (77)
- Inspection/Reinspection/
Surveillance (56)
- Training (25)
- Improper Asbestos
Maintenance (3)
- Improper Asbestos
Response



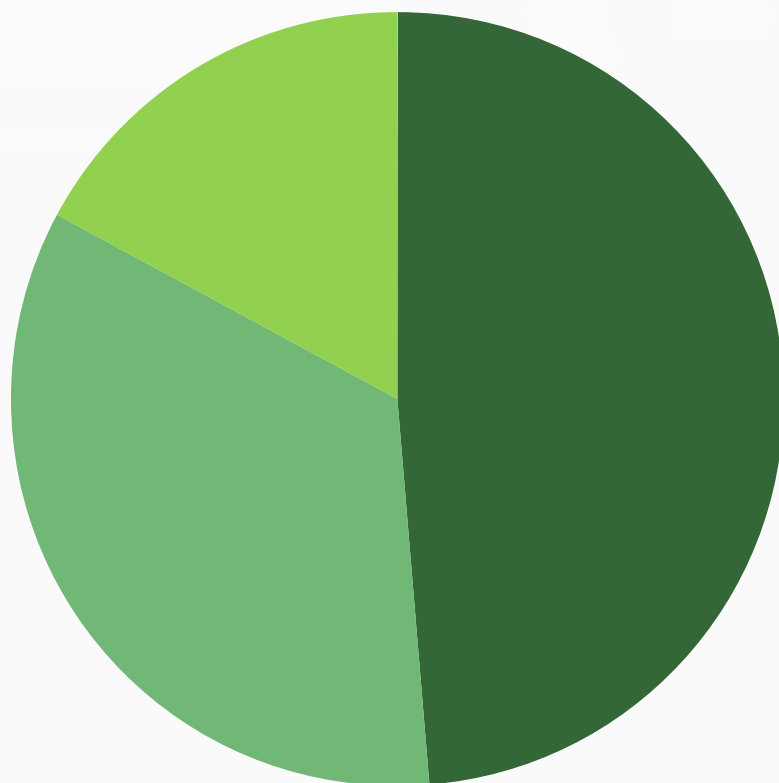
Safe Drinking Water Act (SDWA) – 94 Violations



- Sampling/Monitoring (59)
- Reporting (21)
- MCL Exceedances



Resource Conservation and Recovery Act (RCRA) – 76 Violations



- Hazardous Waste Determinations (37)
- Spent Fluorescent Lamps (26)
- Used Oil Storage and Response (13)



Violations (continued)

- Emergency Planning and Community Right-to-know Act (EPCRA):
 - Failure to Submit Tier I/II Chemical Inventory Reports for Diesel, Propane, and Fuel – **22 instances.**
 - Failure to submit Material Safety Data Sheets for hazardous materials – **1 instance.**
- Clean Water Act (CWA): Discharging water pollutants without a permit
 - **2 instances.**



Violations (continued)

- Toxic Substances Control Act (TSCA): Failure to Properly Dispose of Store, Inspect, and notify EPA of PCB Waste and PCB Handling Activities – **1 instance.**
- Clean Air Act (CAA): Failure to Keep Records Documenting Service of an Appliance Containing Ozone-Depleting Substances
– **1 instance.**



Settlement Components

1. Corrective Action
2. \$235k penalty – which DOI must invest to comply with the AHERA (asbestos) regulations
3. Compliance Audits (Independent, 3rd-Party)
4. Environmental Management System
5. Solar Energy Source Installation at Havasupai
6. Alternate drinking water at Keams Canyon



Settlement Terms: Corrective Action

- DOI claims most violations are already corrected.
- The Arsenic violations at the drinking water systems take a longer time to address. EPA is working with DOI and IHS to address the various issues that result in violations.
- All other violations must be corrected within 90 days of settlement approval (11/18/2011)
- Stipulated penalties will be assessed for any failure.



Settlement Terms: The Penalty

- \$235,000 penalty for the AHERA violations
- To be spent specifically to address AHERA compliance at the schools over the next 4 years.
- Any remainder will be paid to the US Treasury



Settlement Terms: Audit Program

- Each BIE school will be audited:
 - for compliance with all applicable environmental laws
 - by an independent third party auditor
 - once every 3 years
- DOI will be responsible for correcting any violations discovered, generally within 90 days.

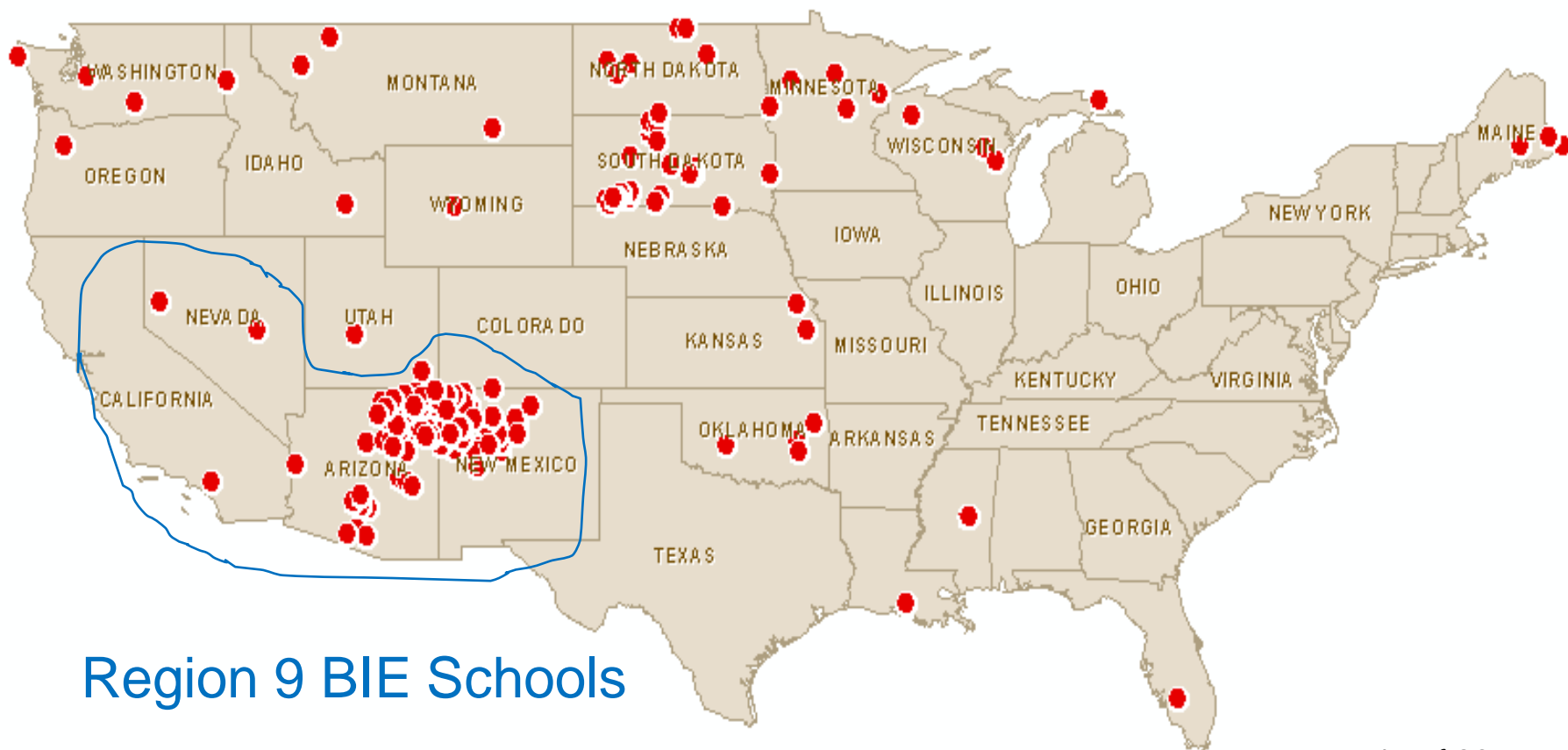


Settlement Terms: Environmental Management System

- DOI is responsible for implementing the EMS.
- Tribes will benefit from the improved environments at BIE schools.
- Findings of the audits will help improve the effectiveness of the EMS.



Affected Facilities





Settlement Terms: Supplemental Environmental Project

- What is a SEP?
- DOI will construct, maintain, and pay for a solar energy power system for BIE's school on the Havasupai Reservation in AZ.
- The system will provide energy to the school, the local drinking water system, and some homes in the community.
- The new system will prevent safe drinking water outages.



Settlement Terms: Alternate Drinking Water

- BIA's Keams Canyon users
- DOI agreement as a part of their settlement – not required by regulations
- DOI is exploring options
- The tribe will not have to pay for or be otherwise responsible for this alternate water source.



Major Benefits to Tribes

- National attention focused on the problems at the BIE schools.
- Requirement for correction of all existing violations under all statutes.
- Better environmental management at BIE schools and BIA water systems.
- Healthier and safer environmental conditions in and around schools.



Consultation Process

- 2008: EPA sent a letter to each tribe with schools having alleged violations of the proposed settlement.
- During the enforcement negotiation process, information is “sensitive” and cannot be open for consultation.
- 2011: Prior to final settlement, EPA hosted two Webinars in early June 2011, for tribes with schools having violations, to update them on the proposed settlement.



The Consultation Process – Region 9

- Region 9 has 87 schools in 9 Tribal nations covered by the Settlement.
- In addition to the letters sent out by OECA/FFEO, Region 9 made separate calls to each of the tribal governments with schools having violations covered by the Settlement.
- R9 will seek tribal involvement on the best method of consultation and information sharing.



Thank you for coming today.

If you have further questions about the Settlement, please feel free to visit the EPA web page at:

<http://www.epa.gov/compliance/resources/cases/federal/bia-settlement.html>

Or contact:

Angela Baranco, Region 9

baranco.angela@epa.gov or (415) 947-4262

Marie Muller, OECA/FFEO

Muller.Marie@epa.gov or (202) 564-0217