

# **MPCA Feedlot Permitting and Compliance and Enforcement Update**

Senate Agriculture and Rural Economies

**Paul Aasen**  
Commissioner

**Gaylen Reetz**  
Watershed Division Director

**Jeff Connell**  
Land and Air Compliance Manager

lppt-1sy12

February 2, 2012



Minnesota Pollution Control Agency

# Summary of Permitting Efficiency Law

---

- ❑ 150 day permitting goal
- ❑ Allow submission of permitting and ER documents electronically
- ❑ Determine application completeness within 30 days
- ❑ Compare proposed changes to standards to federal regs, neighboring states and EPA Region 5.



# Summary of Permitting Efficiency Law

---

- ❑ Allow water projects to be built prior to receipt of a permit.
- ❑ Allow project proposer to prepare preliminary draft EIS.
- ❑ Requires RGU to make decisions on permits within 30 days after approval of EIS
- ❑ Allows EIS and EAW appeals to go directly to Court of Appeals (vs. District Court)



# MPCA Implementation Activities

---

Since March 4, 2011:

- ☐ Created a Permit Managers Team.
- ☐ Better coordination with other agencies (DNR, DEED and Agriculture)
- ☐ Created a cross-media permitting staff team.
- ☐ Amended rules.
- ☐ Meeting with external partners
- ☐ Designed a new integrated permitting database
- ☐ Submitted first semi-annual report in Aug 2011.

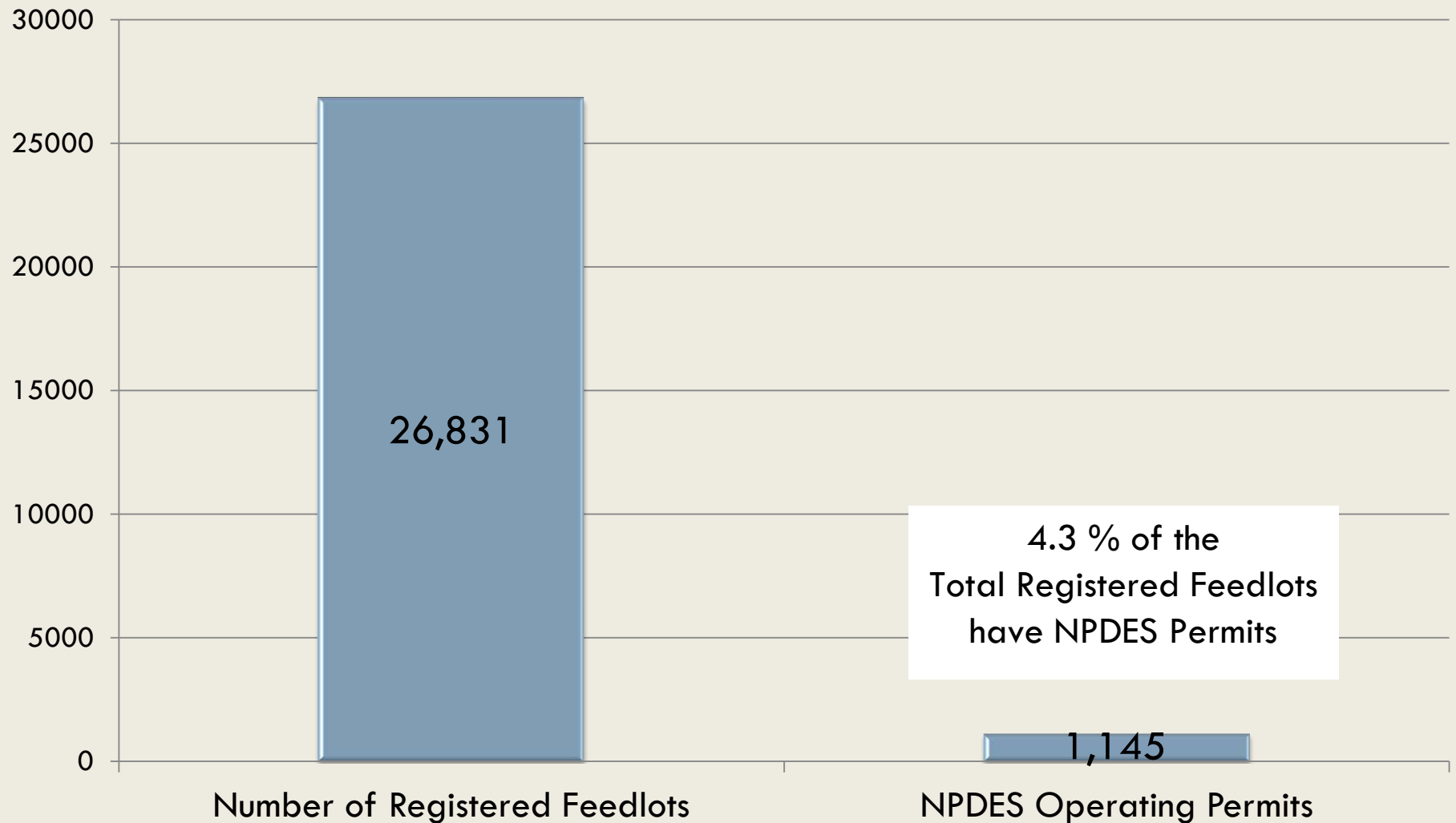


# Permit Applications

<b>Total Applications Received</b>	<b>2658 (1691 priority, 967 non-priority)</b>
Applications returned as incomplete:	5% (125)
Applications withdrawn by applicant:	1% (19)
Total applications available to process:	2514 (1647 priority, 867 non-priority)
Total permits issued:	84% (2103 of 2514)
Priority (construction) permits issued within 150 days:	99% (1632 of 1647)
Permits issued within 150 days:	81% (2036 of 2514)
Permits issued that exceeded 150 days:	3% (67 of 2514)
Complete applications in-house >150 days:	7% (175 of 2514)
Complete applications in-house <150 days:	9% (236 of 2514)

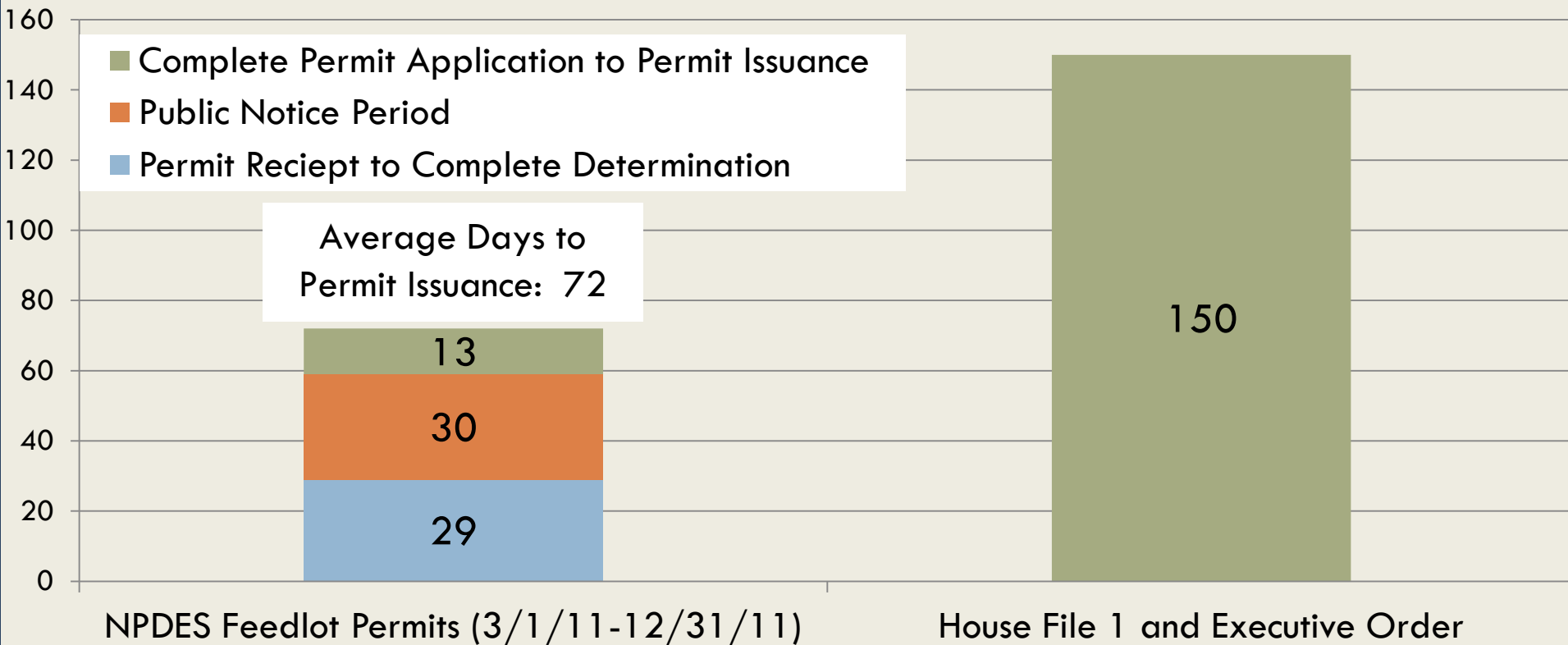


# Registered Feedlots and NPDES Permitted Feedlots (August 2011)



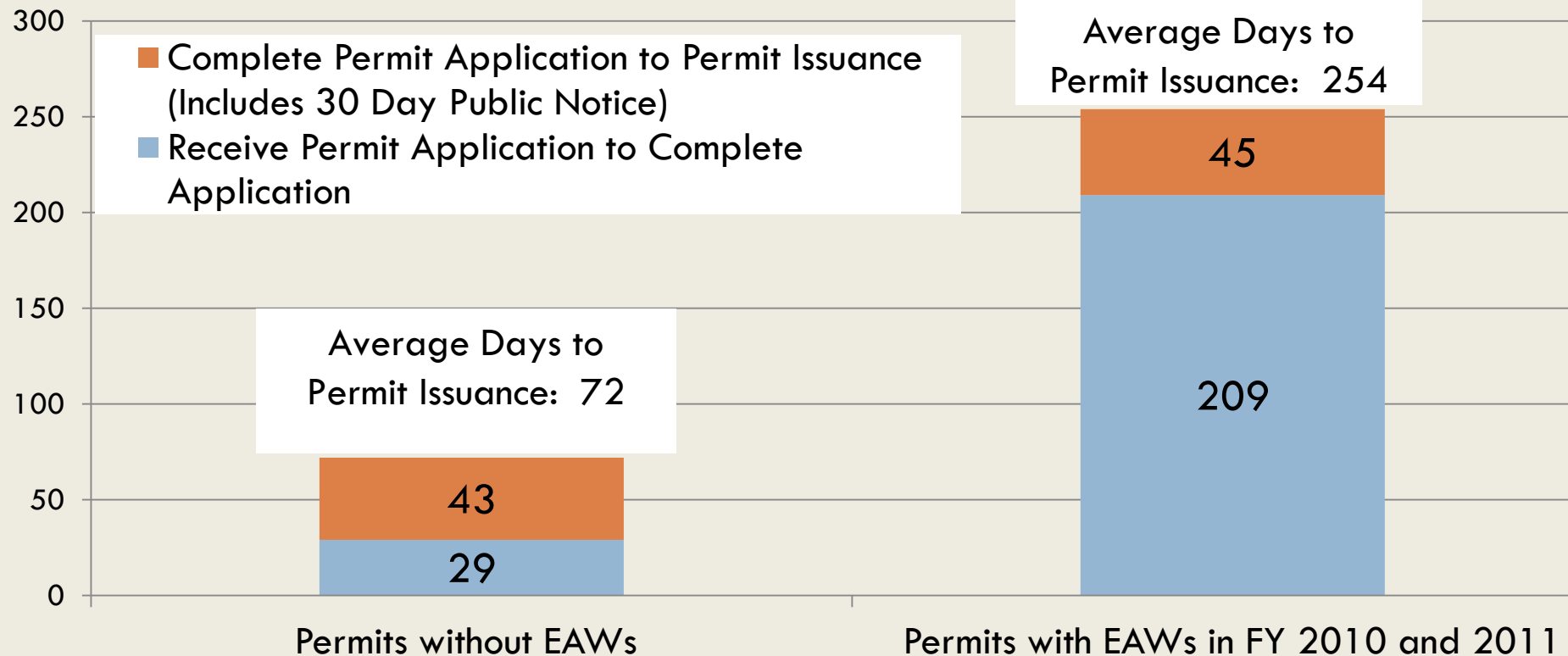
# Average Number of Days to Feedlot NPDES Permit Issuance

- This graph represents the average number of days from a General NPDES Permit application receipt to issuance (complete applications are placed on public notice for 30 days).
- The Feedlot Program issues permits well under the 150 days required by House File 1 and the Governor's Executive Order.



# Average Number of Days Feedlot EAWs in House

- 9 EAWs in Fiscal Years 2010 and 2011 (less than 1% of total NPDES Permits agency-wide)
- This graph represents a complete Permit application, which includes all EAW requirements and a final decision on the need for an EIS
- The “Average Total Number of Days to Permit Issuance” includes the 30 Day Public Notice





# Compliance & Enforcement Objectives

---

- ❑ Protect human health and the environment
- ❑ Insure fairness and equity across regulated sectors
- ❑ Maintain approach that laws are written with expectation of compliance
- ❑ Educate and assist people regarding compliance
- ❑ Eliminate economic benefit from non-compliance
- ❑ Keep burden of compliance on regulated community
- ❑ Maintain penalties and court actions as last resort



# Compliance is the Goal

---

## **MPCA programs focus resources on compliance:**

- ☐ Small business assistance
- ☐ Call centers
- ☐ Inspections and technical assistance
- ☐ Self-audits (Green Star program)
- ☐ Guidance documents and fact sheets
- ☐ Pollution prevention work



# Discovering Noncompliance

---

- ☐ Complaints
- ☐ File Review
- ☐ Submittal Review
- ☐ Routine Inspections
- ☐ Referral from local government
- ☐ Self-reported
- ☐ Targeted or planned evaluation



# Compliance Rates

---

## **Majority of regulated parties are in compliance:**

- ☐ Air – 88%
- ☐ Water – 92.3%
- ☐ Hazardous Waste – 90%



# Enforcement Tools

---

## Non-Penalty

- ☐ Verbal notifications
- ☐ Inspection reports
- ☐ Letters of Warning (LOW)
- ☐ Notices of Violation (NOV)
- ☐ Schedules of Compliance (SOC)

## Potential for Penalty

- ☐ Field Citations
- ☐ Schedules of Compliance (SOC)
- ☐ Administrative Orders (AO)
- ☐ Administrative Penalty Orders (APO)
- ☐ Stipulation Agreements
- ☐ Consent Orders
- ☐ Criminal Action



# Forgivable/Non-forgivable Penalties

---

- ❑ By statute, penalties are forgivable unless violations are serious or repeat
- ❑ When and why are penalties forgiven?  
(Corrective action is not optional)
- ❑ Why are many of our penalties nonforgivable?



# Calculating Penalties

---

- ❑ Gravity Based
  - Severity
  - Extent of deviation
  - Duration
  - Number of violations
- ❑ Impact Potential
  - Harm to public health
  - Harm to environment
  - Irreparable harm
- ❑ Economic Benefit
  - Avoided or delayed costs
  - Correct competitive advantage
- ❑ Adjustments
  - History
  - Culpability
  - Response
  - Deterrence
  - Ability to pay
  - Clean up costs
  - Other penalties
  - Litigation/other factors



# Data Practices Considerations

---

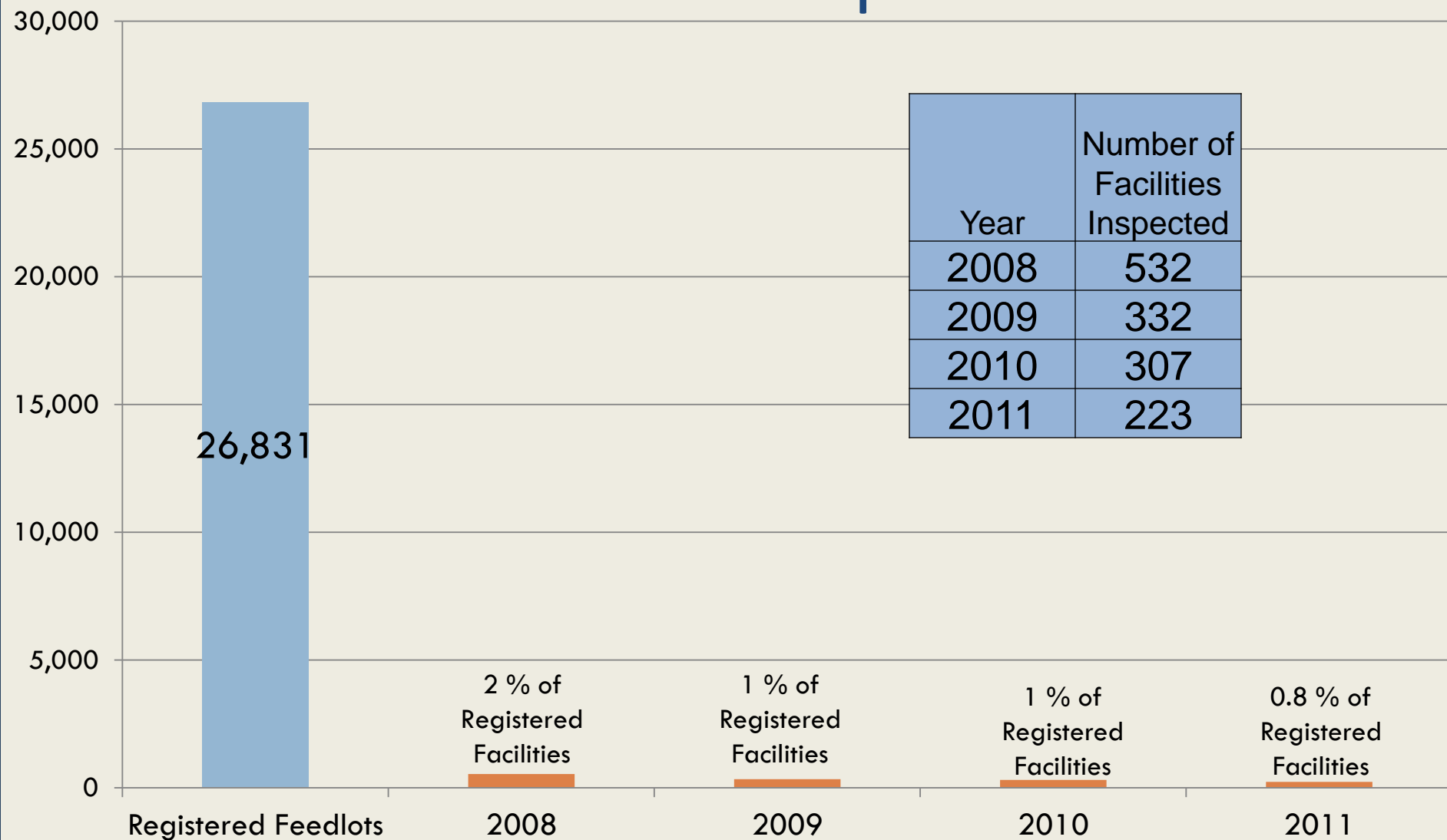
Minn. Stat. 13.39 as construed by Supreme Court  
(Westrom v. DOLI, 2005)

- All pending investigations that could lead to enforcement are not public data
- Makes any case not public if it can be appealed, challenged, or is under investigation
- Makes sharing information with consultants, legislators, contractors, other units of government difficult
- Board may discuss pending investigations



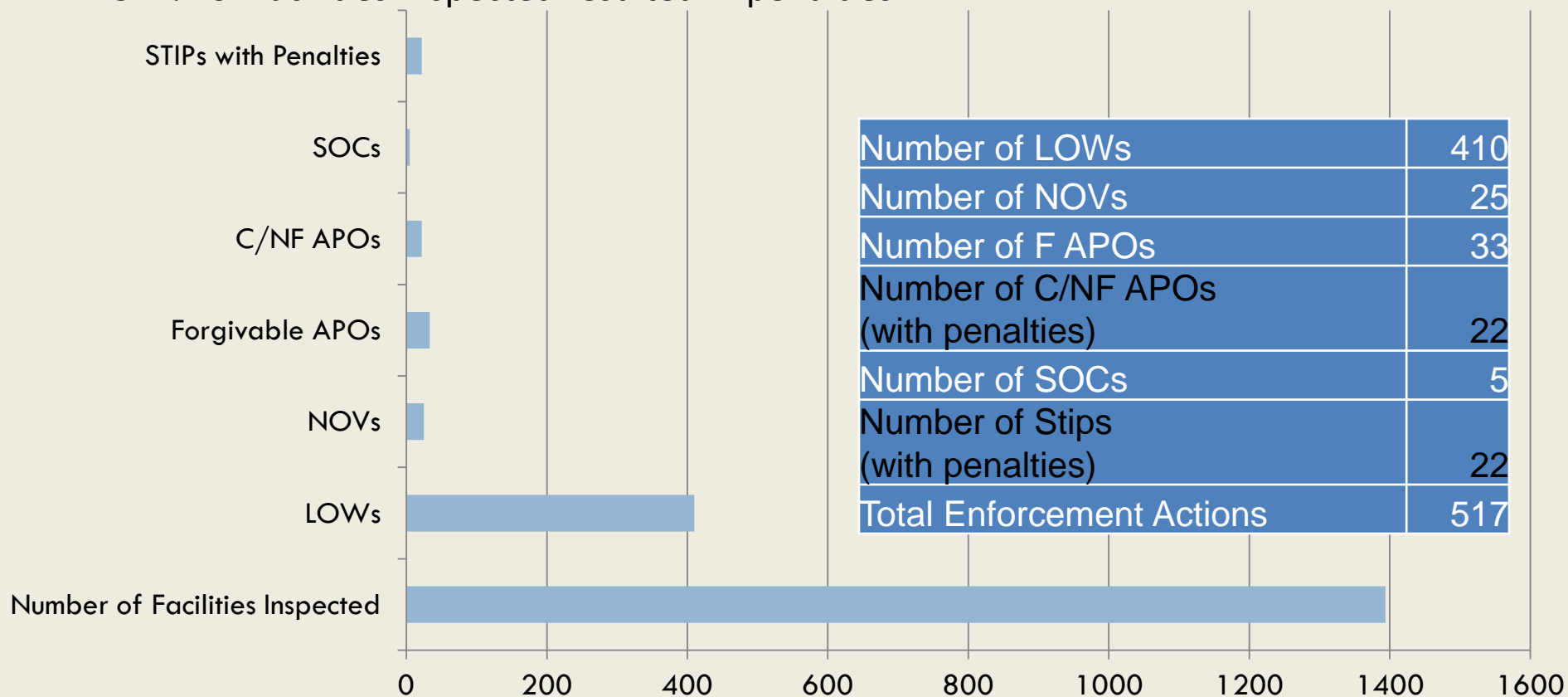


# Registered Feedlots and Total Number of Facilities Inspected Since 2008



# Feedlot Enforcement : Inspection and Enforcement Actions

- Number of Facilities Inspected (1,394) vs. Enforcement Actions (517) Since 2008
- 38 % of Facilities Inspected resulted in some level of enforcement response
- 3.2 % of Facilities Inspected resulted in penalties



# Feedlot Enforcement: Non Penalty/Penalty Actions Since 2008

Number of Non-Penalty Actions (473) vs. Penalty Actions (44)

